

No. 12814

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United States  
Court of Appeals  
for the Ninth Circuit.

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UNITED STATES OF AMERICA,

Appellant,

vs.

P. J. LYNCH,

Appellee.

P. J. LYNCH,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Appeals from the United States District Court,  
Eastern District of Washington,  
Southern Division.

FILED

MAY 17 1951

PAUL P. O'BRIEN,  
CLERK



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Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

HARVEY ERICKSON,

United States Attorney, and

Attorney for Defendant and Appellant,

334 Federal Building,  
Spokane, Washington.

VELIKANJE AND VELIKANJE, and  
JOHN S. MOORE, JR.,

Attorneys for Plaintiff and Appellee,

415 Miller Building,  
Yakima, Washington.



In the District Court of the United States for the  
Eastern District of Washington, Southern Division

Civil No. 386

P. J. LYNCH,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

### COMPLAINT

Comes now the plaintiff and for cause of action  
alleges and avers as follows, to wit:

1.

This action arises under Title 28, United States  
Code, Section 1346 (a) (1), and Title 28, United  
States Code, Section 1402 (a), as hereinafter more  
fully appears.

2.

That prior to the 29th day of April, 1944, the  
Washington Fruit & Produce Company, a corpora-  
tion, was a duly authorized and existing corporation  
under the laws of the State of Washington, and  
that the Plaintiff herein was a stockholder in said  
corporation.

3.

That the Washington Fruit and Produce Com-  
pany, a corporation, was engaged in the handling,  
growing, marketing, and warehousing of fresh  
fruits and vegetables and was also engaged in the  
cold storage handling of meats and other products

in the period immediately prior to its liquidation. That during the time of the corporate existence and some time prior to the time decision was made to liquidate, said corporation declared a Dividend in Kind to its stockholders of record, the fair value of said Dividend in Kind being treated as an ordinary dividend by said stockholders. That on or about the 29th day of April, 1944, said corporation was voluntarily liquidated. That storage accounts, if accruable, under accounting system followed would have had an accruable value [1\*] of \$37,225.96 on April 29th, 1944. That subsequent to said corporation's liquidation, the plaintiff, and other former stockholders of said corporation, were assessed as transferees of said liquidated corporation, the sum of \$34,670.12 excess profits taxes, and the sum of \$5,637.48 declared value excess profits taxes, and as a result of said assessment, the plaintiff paid to the Collector of Internal Revenue \$8667.53 excess profits taxes and \$1221.98 interest thereon, and \$1409.37 declared value excess profits taxes and \$199.63 interest thereon, said taxes and interest being the plaintiff's 25% share of the total transferee assessments made against the former stockholders of the Washington Fruit and Produce Company. That said tax was assessed against such transferees, including plaintiff, as a result of increasing the income of said dissolved corporation for its fiscal period beginning July 1, 1943, and ending April 29, 1944, as follows: First, by increasing income of the corporation by the sum of

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

\$8,939.79, which sum was the excess value received by the stockholders of the corporation on assets distributed to them as a Dividend in Kind over the basis of such assets to the corporation. Second, that income was increased \$37,225.96 by alleging certain storage accounts to be accruable as income prior to liquidation.

## 4.

That said assessment was erroneous in taxing to the corporation (and thus to the plaintiff as transferee) any profit measured by the excess value the stockholders received on assets distributed as a Dividend in Kind over and above the basis of cost of said assets to the corporation. Such excess value, if any, was reported as income by the stockholders of record, as an additional dividend at the time of the distribution.

## 5.

That said assessment was erroneous in taxing to the corporation, (and thus to the plaintiff as transferee) storage alleged to [2] have been accrued in an amount of \$37,225.96, when under the method of accounting followed by the taxpayer and for the most part by the fruit industry, the storage income has never been considered to be an accruable item.

That said corporation at no time during its existence ever followed the policy of accruing storage income and that it is the custom of similar businesses operating within the Yakima area not to anticipate storage income until the merchandise in storage has left the premises. That the corporation in its ranch operations uniformly followed the

practice of capitalizing actual expenditures made and that if any change is to be made in the method of accounting for storage income, consistency demands that only the cost of earning such deferred storage income be capitalized.

## 6.

The plaintiff herein paid such excess profits tax, declared value excess profits tax, and interest, on or about the 12th day of December, 1946, and subsequent thereto filed claims for the refund of said amount. That said claims were denied by letter dated February 3, 1949.

## 7.

That plaintiff waives any and all rights of recovery of that portion of the excess profits taxes, declared value excess profits taxes, interest as previously paid, and subsequent accrued interest, over and above \$10,000.00.

Wherefore, plaintiff prays judgment against defendant as above set forth, together with interest at 6% per annum from December 14, 1946, but not to exceed a sum of \$10,000.00, together with his costs and disbursements herein incurred.

VELIKANJE & VELIKANJE,

/s/ E. B. VELIKANJE,

/s/ S. P. VELIKANJE,

/s/ E. F. VELIKANJE,

/s/ JOHN S. MOORE, JR.,

Attorneys for Plaintiff.

[Endorsed]: Filed April 15, 1949. [3]

[Title of District Court and Cause.]

ANSWER

Answering the complaint herein, the defendant, by its attorney, Harvey Erickson, United States Attorney for the Eastern District of Washington, alleges as follows:

1. The allegations of Paragraph 1 are admitted.
2. The allegations of Paragraph 2 are admitted.
3. Except as hereinafter admitted or alleged, the allegations of Paragraph 3 are denied.

It is admitted that the Washington Fruit and Produce Company was engaged in handling, growing, marketing and warehousing of fresh fruits and vegetables and was also engaged in the cold storage handling of meats and other products immediately prior to its liquidation.

It is alleged on information and belief that on or about February 28, 1944, the corporation declared a dividend to its stockholders of record and that the dividend was paid to the stockholders and reported by them as ordinary income in 1944.

It is admitted that the corporation was voluntarily liquidated on or about April 29, 1944, and that its storage accounts, if accruable had a value of \$37,225.96 on that date. [7]

It is also admitted that subsequent to the corporation's liquidation, transferee assessments were made against the plaintiff and other former stockholders of the corporation in the amounts alleged and that

plaintiff paid to the Collector of Internal Revenue a proportionate share of said assessments in the amounts alleged.

It is further admitted that the foregoing transferee assessments were made for the period and on the grounds alleged except it is denied that the dividend paid to stockholders was a dividend in kind.

4. The allegations of Paragraph 4 are denied except it is admitted that the stockholders reported the dividend paid to them as income.

5. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5.

6. The allegations of Paragraph 6 are admitted except it is alleged that the date of payment was December 13, 1946.

Wherefore, the defendant demands judgment dismissing the complaint on the merits and at plaintiff's cost.

/s/ HARVEY ERICKSON,  
United States Attorney.

/s/ LLOYD L. WIEHL,  
Assistant U. S. Attorney,  
Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed August 16, 1949. [8]

[Title of District Court and Cause.]

ORDER FOR PRE-TRIAL CONFERENCE  
UNDER RULE 16

To Velikanje & Velikanje, Attorneys at Law, 415  
Miller Building, Yakima, Washington.

To Harvey Erickson, United States Attorney, Fed-  
eral Building, Spokane, Washington.

By virtue of Pre-trial Rule 16 of the Rules of  
Civil Procedure for the District Courts of the  
United States, you are hereby directed to appear  
before the undersigned Judge of the above-entitled  
Court, at Yakima, Washington, on Friday, Novem-  
ber 4, 1949, at 1:30 p.m., to consider:

1. The simplification of the issues.
2. The necessity or desirability of amend-  
ments to the pleadings.
3. The possibility of obtaining admissions of  
fact and of documents which will avoid unneces-  
sary proof.
4. The limitation of the number of expert  
witnesses.
5. Such other matters as may be of aid in  
the disposition of the action.

The Clerk of this Court is directed to forthwith  
serve this order upon the above named parties by  
mailing a copy thereof to their attorneys at the  
addresses disclosed by the record herein.

Dated this 17th day of October, 1949.

/s/ SAM M. DRIVER,  
United States District Judge.

Mailed copies to attorneys 10/17/49.

/s/ A. A. LaFRAMBOISE,  
Clerk.

[Endorsed]: Filed October 17, 1949. [9]

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[Title of District Court and Cause.]

#### ORDER ON PRE-TRIAL CONFERENCE

The Court on its own motion does hereby vacate the setting of the above-entitled cause for pre-trial conference on November 4, 1949, at 1:30 p.m., and

It Is Ordered that said cause be and it is hereby set for pre-trial conference on Saturday, November 12, at 10:00 a.m.

Dated this 21st day of October, 1949.

/s/ SAM M. DRIVER,  
United States District Judge.

[Endorsed]: Filed October 21, 1949. [10]

In the District Court of the United States for  
the Eastern District of Washington Southern  
Division

Civil No. 386

P. J. LYNCH,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The above-entitled matter coming on for trial before the above-entitled court on March 20, 1950, and the court having heard the evidence and the arguments of counsel E. F. Velikanje and Thomas R. Winter for plaintiff and defendant, respectively, and being fully advised in the premises does now make the following

Findings of Fact

1.

This action arises under Title 28, United States Code, Section 1346 (a) (1) and Title 28, United States Code, Section 1402 (a).

2.

That prior to the 29th day of April, 1944, the Washington Fruit & Produce Company, a corporation, was a duly authorized and existing corporation under the laws of the State of Washington, and that

plaintiff herein was a stockholder in said corporation.

## 3.

That the Washington Fruit & Produce Company, a corporation, was engaged in the handling, growing, marketing and warehousing of fresh fruits and vegetables. That on or about February 28, 1944, said corporation declared a dividend in kind of 21,977 boxes of apples to its stockholders of record. That the fair value of said dividend in kind was treated as an ordinary dividend by said stockholders, who reported the same as income and paid income taxes thereon.

## 4.

That on or about April 29, 1944, said corporation was voluntarily liquidated, and subsequent thereto the plaintiff and other former stockholders of said corporation were assessed as transferees of said liquidated corporation, in additional sums for excess profits taxes and declared value excess profits taxes. That payments of said taxes together with interest were made by plaintiff and the other former stockholders, plaintiff paying 25% of the total as his share on the basis of stock ownership. That said taxes were assessed against said transferees, including plaintiff, as a result of increasing the income of said dissolved corporation for its fiscal period, beginning July 1, 1943, and ending April 29, 1944, as follows: First, by increasing the corporate income by the sum of \$8,939.79, which sum was the excess value received by the stockholders of

the corporation on the assets distributed to them as a dividend in kind over the basis of such assets to the corporation; and Second, that income was increased \$37,225.96 by ruling that certain storage accounts were accruable as income prior to liquidation.

## 5.

That the total assessments and payments resulting from such increase and ruling were \$34,670.12 excess profits taxes, \$5,637.48 declared value excess profits taxes, and interest thereon. That plaintiff, as transferee, was assessed and thereafter paid as his proportionate share, the sum of \$8,775.97 excess profits taxes plus interest in the amount of \$1,113.54 and \$1,422.45 declared value excess profits taxes plus interest in the amount of \$186.55. That of said sums assessed and paid by plaintiff, \$195.32 on declared value excess profits taxes with interest of \$25.62 and \$1,714.29 on excess profits taxes with interest of \$217.52 were the amounts resulting from the increase of the corporate income by \$8,939.79 as a result of disallowing the dividend in kind as a true dividend, less subsequent adjustments.

## 6.

That said dividend in kind was a true dividend, taxable as income to the stockholders, including plaintiff. That the amounts received by the stockholders in the sales of said assets over and above the basis of such assets to the corporation did not constitute income to the corporation. That said assessment as income to the corporation, and there-

after against the stockholders as transferees, including plaintiff, was erroneous and wrongful.

## 7.

That the increase of corporate income in the amount of \$37,225.96 as the result of accruing storage accounts as income of the corporation as of the date of liquidation was correct. That the assessments thereafter made against the stockholders, including plaintiff, as transferees of the corporation, for such increase was correct and lawful. That the portion of the total assessments and payments attributable to said increase were correctly assessed and paid.

The Court having heretofore made and entered its Findings of Fact does herewith make the following

## Conclusions of Law

## 1.

That the plaintiff is entitled to recover of the defendant the sum of \$195.32 declared value excess profits tax with interest of \$25.62 and \$1,714.29 excess profits tax with interest of \$217.52 or a total of \$2,152.75, together with interest thereon as provided by law, said recovery being upon the erroneous assessment against said corporation (and plaintiff as transferee) any profit measured by the excess value the stockholders received on assets distributed as a dividend in kind over and above the basis of cost of said assets to the corporation.

2.

That the plaintiff is not entitled to recover of the defendant upon plaintiff's claim for recovery upon the increase of corporate income as the result of accruing storage accounts as income of the corporation as of the date of liquidation.

3.

That the plaintiff is entitled to recover of the defendant, plaintiff's costs and disbursements in the bringing of this action.

Done in Open Court this 30 day of Oct., 1950.

/s/ SAM M. DRIVER,

United States District Judge.

Presented by:

/s/ E. F. VELIKANJE, of

VELIKANJE & VELIKANJE,

JOHN S. MOORE, JR.,

Counsel for Plaintiff.

Chambers of  
Sam M. Driver  
United States District Judge  
Spokane 6, Washington

July 26, 1950

Velikanje & Velikanje  
Attorneys at Law  
Yakima, Washington

Mr. Harvey Erickson  
United States Attorney  
Spokane, Washington

Re: P. J. Lynch v. United States, No. 386,  
and Nos. 387 through 392.

Gentlemen:

In the above cases two main questions were presented for decision: namely, first, whether a dividend in kind declared by the corporation should be declared invalid and ineffective so that the income represented by appreciation in the value of the apples should be charged to the corporation rather than to the stockholders; and, second, whether the income of the corporation from receipts for storage of the property for the United States Government should be charged as income against the corporation as having accrued prior to liquidation of the corporation in April, 1944. The court has come to the conclusion that the taxpayer plaintiff should prevail as to the first issue and the government should prevail as to the second.

While I think the question is a very close and difficult one, it is my view that the declaration of

dividends consisting of apples owned by the corporation, which the corporation was authorized to make under Section 115 of the Internal Revenue Code, was a genuine, rather than a sham, transaction. There had been no prior orders for the apples and no prior sale or arrangements for sale, so that the stockholders were not, in my view, acting as a mere conduit for the conveyance of title in the carrying out of a pre-arranged sale. I think without question the primary motive for the declaration of the dividend was to reduce the income tax liability of the corporation, but assuming, as I have done, that the declaration of the dividend was a genuine, legitimate transaction, the mere fact that it was motivated by a desire to reduce taxes would not thereby render it invalid.

As to the matter of storage charges, I think that since the contract provides that storage shall be computed on a monthly basis the method of accounting which the Commissioner required the taxpayer to adopt more truly reflected its income than would have been done by not accruing the storage charges until the goods were taken out of storage.

Findings and judgments may be presented in accordance with the views herein expressed.

Sincerely yours,

SAM M. DRIVER,  
United States District Judge.

SMD:jr

[Endorsed]: Filed October 30, 1950.

In the District Court of the United States for the  
Eastern District of Washington, Southern Division

Civil No. 386

P. J. LYNCH,

Plaintiff,

vs.

UNITED STATES OF AMERICA

Defendant.

### JUDGMENT

The above-entitled matter coming on for trial before the above-entitled court on March 20, 1950, and the court having heard the evidence and the arguments of counsel, E. F. Velikanje for plaintiff and Thomas R. Winter for defendant, and having heretofore made and entered its Findings of Fact and Conclusions of Law, and being fully advised in the premises,

It is, Now, Here Ordered, Adjudged and Decreed that the plaintiff, P. J. Lynch, be and he is hereby granted judgment against the defendant, United States of America, in the sum of \$2,152.75, together with interest thereon as provided by law, together with plaintiff's costs and disbursements herein to be taxed.

It is Further Ordered, Adjudged and Decreed that plaintiff's action against the defendant for recovery of tax payments made as the result of accruing storage accounts of the Washington Fruit and Produce Company as of April 29, 1944, the

date of liquidation of said corporation, be, and the same is, hereby dismissed with prejudice.

Done in Open Court this 30th day of October, 1950.

/s/ SAM M. DRIVER,

United States District Judge.

Presented by:

/s/ E. F. VELIKANJE,

JOHN S. MOORE, JR.,

Counsel for Plaintiff.

[Endorsed]: Filed October 30, 1950.

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[Title of District Court and Cause.]

#### NOTICE OF APPEAL

Notice is Hereby Given that the United States of America, the defendant above named, by Harvey Erickson, United States Attorney for the Eastern District of Washington, and Frank R. Freeman, Assistant United States Attorney for said District, does hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 30th day of October, 1950.

Dated this 27th day of December, 1950.

/s/ HARVEY ERICKSON,

United States Attorney.

/s/ FRANK R. FREEMAN,

Assistant U. S. Attorney.

Receipt of Copy Acknowledged.

[Endorsed]: Filed December 27, 1950.

[Title of District Court and Cause.]

STATEMENT OF POINTS RELIED  
UPON ON APPEAL

The appellant states that in its appeal to the United States Court of Appeals for the Ninth Circuit from the judgment entered in the above-entitled case on October 30, 1950, pursuant to the provisions of Rule 75(d) of the Rules of Civil Procedure, it intends to rely on the following points:

1. The trial court erred in finding that the dividend in kind was a true dividend.

The trial court erred in failing to find that said dividend in kind was a sham.

2. The trial court erred in finding that the sale of the dividend apples was made by the stockholders.

The trial court erred in failing to find that said sale was made by the corporation.

3. The trial court erred in finding that the net proceeds from the sale of the dividend apples did not constitute taxable income to the corporation to the extent that such proceeds exceeded the corporation's basis for the apples.

The trial court erred in failing to find that the excess of the net sales proceeds over the corporation's basis for the apples represented taxable income to the corporation.

4. The finding of fact No. 6, made by the trial

court, is not supported by the evidence and is contrary to law.

5. The trial court erred in failing to find and conclude that the declaration of the dividend in kind constituted an anticipatory assignment of income by the corporation.

6. The trial court erred in finding that the assessment against plaintiff, as transferee of the corporation, was erroneous and unlawful.

The trial court erred in failing to find that said assessment was proper and lawful.

7. The trial court erred in granting judgment for plaintiff on the dividened in kind issue.

The trial court erred in failing to grant judgment for the defendant on said issue.

Dated this 9th day of January, 1951.

/s/ HARVEY ERICKSON,  
United States Attorney,

/s/ FRANK R. FREEMAN,  
Assistant U. S. Attorney,  
Attorneys for Defendant-  
Appellant.

[Endorsed]: Filed January 10, 1951.

[Title of District Court and Cause.]

NOTICE OF CROSS APPEAL

Notice Is Hereby Given that P. J. Lynch, the plaintiff above-named, by and through his attorneys Velikanje & Velikanje and John S. Moore, Jr., does hereby cross-appeal to the Circuit Court of Appeals for the Ninth Circuit from that portion of the final judgment entered in this action contrary to the plaintiff's prayer of his complaint, which judgment was entered on the 30th day of October, 1950.

Dated this 28th day of December, 1950.

VELIKANJE & VELIKANJE,

/s/ E. F. VELIKANJE,

/s/ S. P. VELIKANJE,

/s/ JOHN S. MOORE, JR.,

Attorneys for Plaintiff.

Copy mailed.

[Endorsed]: Filed December 28, 1950.

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[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH CROSS-  
APPELLANT INTENDS TO RELY ON  
APPEAL

The plaintiff-appellee and cross-appellant states that in his appeal to the United States Court of Appeals for the Ninth Circuit from the judgment

entered in the above-entitled case on October 30, 1950, pursuant to the provisions of Rule 75(d) of the Federal Rules of Civil Procedure, he intends to rely on the following points:

1. The trial court erred in finding that the increase of corporate income by accruing storage accounts as income of the corporation was correct.

The trial court erred in failing to find that said increase was incorrect and unlawful.

2. The trial court erred in finding that the assessments against the stockholders, including plaintiff, as transferees of the corporation for the increase of corporate income by accruing storage accounts was correct and lawful.

The trial court erred in failing to find that said assessments against the stockholders, including plaintiff, were erroneous and unlawful.

3. The trial court erred in finding that the portion of the total assessments and payments attributable to the increase of corporate income by accruing storage accounts was correctly assessed.

The trial court erred in failing to find that the portion of the total assessments and payments attributable to the increase of corporate income by accruing storage accounts was wrongfully and erroneously assessed and collected.

4. The finding of fact number 7 made by the trial court is not supported by the evidence and is contrary to law.

5. The trial court erred in failing to find that

said corporation should not have been required to accrue such storage accounts as income to the corporation as of the date of corporate liquidation.

6. The trial court erred in finding that plaintiff was not entitled to recover upon plaintiff's claim relative to the increase of corporate income by accruing storage accounts.

7. The trial court erred in granting judgment for the defendant on the issue as to increasing corporate income by accruing storage accounts.

The trial court erred in failing to grant judgment for the plaintiff on the issue as to increasing corporate income by accruing storage accounts.

Dated this 16th day of January, 1951.

VELIKANJE & VELIKANJE,

/s/ E. F. VELIKANJE,

/s/ S. P. VELIKANJE,

/s/ JOHN S. MOORE, JR.,

Attorneys for Plaintiff-Appellee and Cross-Appellant.

[Endorsed]: Filed January 16, 1951.

United States District Court, Eastern District of  
Washington, Southern Division

Civil No. 386

P. J. LYNCH,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Record of Proceedings at the Trial

On March 20, 1950

Before: Honorable Sam M. Driver,  
United States District Judge.

Appearances:

For the Plaintiff:

E. F. VELIKANJE, of  
VELIKANJE & VELIKANJE, and  
JOHN S. MOORE, JR.,

Both of Yakima, Washington.

For the Defendant:

THOMAS R. WINTER,

Special Assistant to the Chief Counsel,  
Bureau of Internal Revenue, 713  
Smith Tower Building, Seattle,  
Washington.

HARVEY ERICKSON,

United States Attorney for the Eastern  
District of Washington, Spokane,  
Washington, of counsel for the de-  
fendant. [11]

Be It Remembered that the above-entitled cause came on for trial at Yakima, Washington, on the 20th day of March, 1950, before the Honorable Sam M. Driver, United States District Judge, sitting without a jury, the plaintiff appearing by E. F. Velikanje, of Velikanje & Velikanje, and John S. Moore, Jr., both of Yakima, Washington, the defendant appearing by Thomas R. Winter, Special Assistant to the Chief Counsel, Bureau of Internal Revenue, 713 Smith Tower Building, Seattle, Washington; whereupon, the following proceedings were had and done, to wit:

The Court: Are we ready on Plath and Lynch and Bloxom against the United States?

Mr. Velikanje: Yes, your Honor; I thought just the decision [13] in the Lynch case will be determinative of the others, except the one of M. Gail Plath relating to the gift tax.

\* \* \*

The Court: The other cases seem to have common questions. As I remember the pleadings, speaking generally, the excess profits tax and the declared value excess profits tax of this liquidated corporation, Washington Fruit and Produce Company, was increased on two accounts; one was that it is the contention of the government that the storage

charges should have been accrued as of the date of liquidation rather than being carried over, and the other was that some addition should be made in income of the corporation for its last year of existence because of the declaration of a so-called dividend in kind of apples that were distributed to the stockholders. [14]

Mr. Winter: Your Honor, here are the issues which we agreed upon in the pretrial conference. If your Honor will recall, we held a pretrial conference in your office, and your Honor instructed us to draw a pretrial order. I advised counsel I would submit the issues and the government's contentions, and I did, and apparently that's as far as we got, and here is the government's contentions in writing that I submitted to counsel; now, that's all we have as far as the government has on the pretrial order. It sets forth the government's contentions on those issues, which are the full issues in the case.

The Court: Well, I found that in Portland, Oregon, they seem to make pretrial conferences work where they get the lawyers in and send them out and tell them to get up an order, but I don't seem to be as good a disciplinarian; the lawyers go out and forget about it, or get busy doing something else. Have you looked over this statement of issues?

Mr. Velikanje: Yes, your Honor, and I believe those are the issues to be involved, just as you had stated them.

The Court: As I understand, you wish to take up the Lynch case first as determinative of the cases of the class other than the Plath case?

Mr. Velikanje: Yes.

Mr. Winter: That's counsel's desire; we have no preference. We have witnesses on both who will have to remain. [15]

\* \* \*

JOHN M. BLOXOM

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Velikanje:

Q. Your name is John Bloxom?

A. Yes.

Q. Mr. Bloxom, in the spring of 1944 what were your duties, or what was your business?

A. I was secretary-treasurer of the Washington Fruit and Produce Company.

Q. Was that a corporation?

A. It was a corporation until May 1, yes.

Q. You are also one of the parties plaintiff in this series of suit, are you not? A. Yes.

Q. You say you were secretary-treasurer?

A. Yes.

Q. That was a corporation; who was the president of the corporation?

A. Fred B. Plath.

Q. Is Mr. Plath now living? A. No. [19]

Q. Do you know the date of his death?

A. October 22, 1948.

Q. Mr. Bloxom, in the year—I believe this is stipulated—

(Testimony of John M. Bloxom.)

A. Pardon me; I'm not exactly sure of that date.

Q. I believe that's correct. On February 28, 1944, did the corporation declare a dividend?

A. Yes.

Q. Were you present at the meeting of the stockholders or directors?           A. Yes.

Q. Were you a director in the corporation?

A. I believe I was made a director at that same meeting.

Q. You were made a director; did you participate at this meeting?           A. Yes.

Q. Will you just explain to the Court what happened at that meeting?

Mr. Winter: If the Court please, the minutes of the Board of that date is the best evidence.

The Court: Yes, if they're available I should think they would be.

Mr. Winter: I think they are available.

The Court: What meeting is this?

Mr. Velikanje: February 28, 1944.

Mr. Winter: Have you made copies of all the minutes? [20]

Mr. Velikanje: I have some copies. I will make copies of them.

Mr. Winter: Why don't we identify the entire minute book, and then we'll take out and substitute what copies we need. That might save some time.

Mr. Velikanje: I'm agreeable to stipulating that.

The Court: Well, the record may show that that is stipulated, then, and counsel can substitute copies.

Mr. Winter: That's agreeable.

(Testimony of John M. Bloxom.)

Mr. Velikanje: We offer in evidence the copies of the minutes of the Washington Fruit and Produce Company.

Mr. Winter: No objection.

(Whereupon, the minute book was marked Plaintiff's Exhibit 1 for identification.)

The Court: Is that the minute book of both the directors and stockholders?

Mr. Velikanje: Yes. I believe it is the only minute book that you have, is it not?

A. Yes.

The Court: It covers both the stockholders' meetings and the directors' meetings?

A. Yes.

The Clerk: Is it being admitted?

The Court: Well, I think just the minutes of February 28, 1944. If there's no objection that will be [21] admitted.

Mr. Winter: No objection.

The Court: I wonder if you shouldn't give that a letter designation, Mr. LaFramboise, 1-a, so that we can keep a record of what is going in.

(Whereupon, the minutes of February 28, 1944, were admitted in evidence as Plaintiff's Exhibit No. 1-a.)

Q. (By Mr. Velikanje): Mr. Bloxom, I hand you plaintiff's Exhibit 1-a. Is that the minutes of the meeting that you referred to on February 28, 1944?

(Testimony of John M. Bloxom.)

A. The trustees' meeting, yes.

Q. It's the trustees' meeting?           A. Yes.

Q. Can you for the Court's information refer to that exhibit and tell what that says? I don't know whether you'd like it read into the record, Mr. Winter, or whether you will object to Mr. Bloxom testifying at this time so that this matter can get before the Court, unless the Court desires to read it.

Mr. Winter: It's immaterial to me, whatever the Court desires to do.

The Court: Well, it's in evidence now. Suppose I read it, or in order that Mr. Winter may follow it——

Mr. Velikanje: Well, I think Mr. Winter is [22] very familiar with it.

The Court: I suggest that you read it, and then we can all hear it, as if you were reading it to the jury.

(Whereupon, Mr. Velikanje read Plaintiff's Exhibit 1-a to the Court.)

Q. (By Mr. Velikanje): Mr. Bloxom, on this fruit, how was that fruit handled by your warehouse?

A. Well, each of those lots was put in a separate place by itself at the time it was received from the grower the previous fall, and kept separated until it was packed. I believe there was one lot there that had been packed but was still identifiable by its own number on each box.

Q. Were each one of these lots identifiable at all times?           A. Yes.

(Testimony of John M. Bloxom.)

Q. When would this fruit lose its identity——

A. Well, if it was loaded——

Q. ——if ever?

Mr. Winter: Now, if the Court please, that's calling for a conclusion.

The Court: Yes, I rather think it is, sustain the objection.

Q. I'll withdraw my question. Mr. Bloxom, could this fruit be traced by lot number even after it was shipped?

A. It could if it was shipped as a packed box. Some of it was shipped in bulk, and after it left our warehouse it [23] couldn't be traced if it was shipped in bulk.

Q. You say some was shipped in bulk?

A. Yes.

Q. But you also say that any lots that were shipped that were packed and shipped could be followed? A. Yes.

Q. How was that done?

A. A separate identifying number on each box designated the lot from which it came.

Q. After this dividend in kind was declared was anything further done relative to this fruit?

A. The stockholders made a contract with the Washington Fruit and Produce Company to dispose of the apples.

Mr. Winter: Now, I'll object to this; the contract is the best evidence.

Mr. Velikanje: I have the contract here and will have it identified.

(Testimony of John M. Bloxom.)

The Court: I assume this is just preliminary, and you can produce the contract?

Mr. Velikanje: That's right.

(Whereupon, agreement dated February 28, 1944, was marked Plaintiff's Exhibit No. 2 for identification.)

Q. (By Mr. Velikanje): Mr. Bloxom, I hand you plaintiff's identification 2; what is that? [24]

A. That's an agreement between the stockholders and the Washington Fruit and Produce Company to dispose of these apples for the stockholders.

Mr. Velikanje: We offer it in evidence.

Mr. Winter: No objection.

The Court: It will be admitted.

(Whereupon, Plaintiff's Exhibit No. 2 for identification was admitted in evidence.)

Q. Mr. Bloxom, do you know in any way that this agreement was not carried out?

A. No, so far as I recall it was carried out right to the letter.

Q. Did you have similar agreements with independent growers?           A. Yes.

(Whereupon, accounting record was marked Plaintiff's Exhibit No. 3 for identification.)

Q. Mr. Bloxom, I hand you plaintiff's identification 3. Will you tell the court what that is?

A. That was the Washington Fruit and Produce Company's bookkeeper's accounting on the handling and sale of this fruit, to the stockholders.

(Testimony of John M. Bloxom.)

Q. Do you know whose handwriting that is?

A. Miss Walker.

Q. Is she still in your employ?

A. No. [25]

Q. What was her capacity at the Washington Fruit and Produce Company?

A. She was a bookkeeper.

Q. Were these papers all in your possession until just a few days ago? A. Yes.

Q. And under your control? A. Yes.

Q. And you delivered them to me at that time?

A. Yes.

Q. These are part of the original records of the old Washington Fruit and Produce Company, is that correct? A. Yes.

Mr. Winter: Have you any copies of these?

Mr. Velikanje: You have copies of those attached to the former records furnished to you.

Mr. Winter: I don't have them.

Mr. Velikanje: You have copies of them on that report that was delivered to you. You were given photostatic copies on April 2, 1946.

The Court: If this is to be part of the record you'll have to speak up so the reporter can hear you.

Mr. Winter: I was just asking counsel if he had copies of the exhibits. May I ask the witness—have you offered this? [26]

Mr. Velikanje: Yes, I'm offering it.

Mr. Winter: May I ask the witness a question?

The Court: Yes, all right.

Voir Dire Examination

By Mr. Winter:

(Testimony of John M. Bloxom.)

Q. Referring to what has been marked for identification plaintiff's Exhibit 3, Mr. Bloxom, you say this is a statement as to the receipts and charges made against the stockholders; is it a settlement sheet of this transaction, is that what it's supposed to be?       A. Yes.

Q. Did you prepare the exhibit?

A. No, that was prepared by our bookkeeper; that's her original pencil accounting to us, and I think Mr. Velikanje had typewritten copies made of that.

Q. And who was the bookkeeper?

A. Miss Walker.

Q. She's no longer with your company?

A. No.

Q. Is she in Yakima?

A. Well, so far as I know she is here in Yakima. Mr. Velikanje: Yes, she is in Yakima, I'll state that to you.

Q. Does this exhibit show what orders for apples were on hand at the time the dividend, the so-called dividend in kind was——

A. There were no orders on hand. [27]

Q. I asked you if the exhibit showed any orders on hand.       A. No.

Q. Does it only have reference to these lot numbers of apples?

A. Yes, names of the owners that brought the apples in, which were in the minutes of the meeting of February 28.

Q. Well, does it show the apples which were substituted for the lot which wasn't there when they

(Testimony of John M. Bloxom.)

come to dispose of the apples?

A. I don't know.

Q. Huh? A. I don't know.

Q. In any event, that's a settlement sheet made by the company's bookkeeper with the company's stockholders? A. That's right.

Q. Was that settlement sheet made with any other representative of the stockholders, any bookkeeper of the stockholders?

A. I don't understand the question.

Mr. Winter: I think that's all. We have no objection to it.

Mr. Velikanje: We offer it in evidence, your Honor.

The Court: It will be admitted.

(Whereupon, Plaintiff's Exhibit No. 3 for identification was admitted in evidence.)

Mr. Velikanje: We would like on several of these, [28] this is journal records, and we would like to make copies of these and substitute them later.

Mr. Winter: Yes; would you make copies for me? I would appreciate it very much. We have no objection to substituting copies.

The Court: Copies may be substituted, then. That will apply also to the minute book, I assume.

Direct Examination

(Continued)

By Mr. Velikanje:

Q. Mr. Bloxom, at the time of declaring this

(Testimony of John M. Bloxom.)

dividend in kind did the Washington Fruit have any orders on hand for fruit, unfilled?      A. No.

Q. Did the Washington Fruit ultimately sell all of this fruit?      A. Yes.

Q. For the stockholders?      A. Yes.

Q. And account to them?      A. Yes.

Mr. Winter: Of course we object and ask that the last question be stricken in that it assumes the issue which is here for determination, as to whether or not they sold for the stockholders or for themselves.

The Court: Well, I take the answer to mean they did sell the fruit and account to the stockholders. [29]

Q. Such sale was made under that agreement, which was Exhibit 2?      A. Yes.

Q. Mr. Bloxom, did you engage in the year 1944 in business other than the storage and handling of fruit?      A. Yes.

Q. What other business were you engaged in at that time?      A. Individually, or——

Q. As a corporation.

A. As a corporation? We were engaged in the storing of merchandise for the government, other than fruit.

(Whereupon, storage contract was marked Plaintiff's Exhibit No. 4 for identification.)

Q. I hand you plaintiff's identification 4. What is that?

A. That's a storage contract which the corpora-

(Testimony of John M. Bloxom.)

tion had with the Federal Surplus Commodities Corporation.

Q. And was this in effect in the spring of 1944?

A. I think it was still in effect at that time, yes.

Q. You had meat and other products in storage for the government at that time? A. Yes.

Mr. Velikanje: We offer this in evidence.

Mr. Winter: No objection.

The Court: It will be admitted.

(Whereupon, Plaintiff's Exhibit No. 4 for identification was [30] admitted in evidence.)

Q. Mr. Bloxom, was this corporation liquidated in the last of April of 1944? A. Yes.

Mr. Winter: You mean about the last, don't you?

Mr. Velikanje: Yes, I think it was the 29th; I think that's been admitted in the answer, your Honor, that this corporation was liquidated as of the 29th of April, 1944.

Q. (By Mr. Velikanje): Mr. Bloxom, did the Washington Fruit and Produce Company store fruit, meat, and other products? A. Yes.

Q. When did you come in as a member of this corporation?

A. I had stock transferred to my name on the books of the corporation I believe on December 30, 1943.

Q. December 30, 1943; during the time that you were with the corporation were you familiar with its methods and practices of accounting?

(Testimony of John M. Bloxom.)

A. Yes.

Q. What was the procedure or method and practice of accounting of the Washington Fruit and Produce Company as it related to the handling of storage charges?

Mr. Winter: We'll object to that; the books are the best evidence as to the method of accounting. He only became a stockholder December, 1943; he's not the bookkeeper; [31] he's not the accountant.

Mr. Velikanje: He was the secretary-treasurer.

The Court: Are the books available here?

Mr. Velikanje: No, they're not.

Mr. Winter: We'll concede that they reported on an accrual basis of accounting. Is that what you intend to prove by the witness?

Mr. Velikanje: No.

Mr. Winter: Do you have your income tax return here? That will show the basis of accounting.

The Court: I'm not sure whether the question contemplates a method of accounting for income tax purposes.

Mr. Velikanje: For corporate procedure; not necessarily for income tax, but as to their corporate procedure.

Mr. Winter: They've got to report in the income tax report on the basis their books are kept on; they can't keep their books on a cash receipt basis and report on an accrual basis, nor can they change without permission. We submit the answer to the question calls for a conclusion of the witness, and that the books are the best evidence.

(Testimony of John M. Bloxom.)

The Court: I think the books are the best evidence, unless they're not available. [32]

Mr. Velikanje: Well, they're not available.

The Court: In view of the fact this is a trial before the court I'll admit the evidence, reserving your right to strike it, Mr. Winter. On that basis you may proceed. The record may show that this line of questioning and testimony is over the objection of government counsel.

(Pending question read by the reporter.)

A. We charged storage on each item at the time it was shipped from our plant.

Q. Was any storage accrued on a monthly basis?

A. No.

Q. Mr. Bloxom, how long have you been in the fruit industry in Yakima?

A. About twenty-seven years.

Q. Would you just tell the Court what your experience has been in the fruit industry in Yakima?

A. With respect to——

Q. What companies you worked with, and what your interests were.

A. I was with the Perham Fruit Company for about twenty years of that twenty-seven, and with the Washington Fruit and Produce Company the other seven years.

Q. What were your duties with the Perham Fruit Company?

A. I was assistant general manager, and treasurer. [33]

(Testimony of John M. Bloxom.)

Q. During those years were you familiar with the accounting methods used and employed by the Perham Fruit Company relating to the charging of storage?      A. Yes.

Q. What were their methods?

A. The same as the Washington Fruit and Produce Company; they charged storage on each shipment at the time it was shipped from the cold storage plant.

Q. Did they ever accrue storage charges monthly or prior to being shipped out?      A. No.

Q. Are you familiar with the methods as used on Produce Row or within the Yakima Valley as to the handling of accounting relating to storage charges, other than the two businesses you've mentioned?

A. So far as I know all fruit storage companies handle the charging of their storage the same way that we do.

Q. Mr. Bloxom, in the spring of 1944 approximately how much in dollars of government merchandise were you storing?

A. As I recall we figured its value at between two and three million dollars.

Q. Did you attempt to secure insurance on this merchandise?

A. Yes, we attempted to secure a certain kind of insurance on it to protect us in case of our negligence that would cause any damage or destruction to the merchandise. [34]

Q. Was this highly perishable merchandise?

(Testimony of John M. Bloxom.)

A. Some of it was highly perishable, and some to a lesser extent. It was all perishable, however.

Q. How much insurance were you able to obtain? A. We obtained a million dollars only.

Q. Did you attempt to secure additional insurance?

A. We attempted to secure two million dollars.

Q. But you were unable to?

A. That's right.

Q. Now, you say that you attempted to secure insurance to guard you against your negligence. What might that negligence consist of?

Mr. Winter: We object, if the Court please; I don't see the relevancy and materiality of this line of questioning.

The Court: Well, I'm not familiar enough with the issues to know what it is either.

Mr. Velikanje: My thoughts are this, your Honor: I want to show that under this marketing contract there was a possibility of damage or injury resulting to this merchandise that was in here for storage, until such time as it was shipped out.

Mr. Winter: Well, there's always that hazard on every storage contract. What does that have to do with it? [35]

The Court: Part of the amount in controversy has to do with storage on government property?

Mr. Velikanje: Yes.

The Court: I'll overrule the objection.

A. Our men might carelessly push a pile of boxes over against a pipe and break it, causing am-

(Testimony of John M. Bloxom.)

monia to escape and ruin all the government merchandise in a room. That's one.

Q. Was this merchandise all under cold storage?

A. Yes.

Q. Do you know what temperatures had to be maintained on the majority of it?

A. Part of it was zero, and part of it was thirty degrees.

Q. Mr. Bloxom, on this fruit on which you testified as to the dividend in kind, where did that fruit come from?

A. It came from growers in this area from whom we bought the fruit previous.

Q. The corporation had bought the fruit outright, had they not?

A. Prior to that date we had bought it and the corporation owned it.

Q. And I believe you also testified that you handled other fruit for other independent growers in exactly the same manner as it was handled for these trustees?

Mr. Winter: Do you mean in exactly the same manner, they would buy it outright [36] themselves?

Q. No, handling it in sale and delivery, it was packing, sale and delivery.

A. We bought some fruit from the growers, and for other growers we handled the packing and the sale of their fruit for their account, and accounted to them after it was disposed of.

Mr. Velikanje: That's all; you may inquire.

(Testimony of John M. Bloxom.)

Cross-Examination

By Mr. Winter:

Q. Mr. Bloxom, you say you became a stockholder of this corporation about December, 1943?

A. That's the time the stock was transferred to my name on the books.

Q. Who did you acquire your stock from, your father?

A. No, part of it was on the books in the name of Mr. Barnes, and part in the name of Mr. Plath, I believe, at the time I acquired it.

Q. I see. Well, now, what method of accounting was used by the corporation in keeping its books; was it the accrual method of accounting, or the cash receipts and disbursements method?

A. Well, it was what the Revenue Bureau I think would call the accrual method.

Q. In other words, you accrued all of your wages as they became due; I mean you accrued all the wages for operational costs? [37]

A. We paid the wages when they became due.

Q. Yes; well, you accrued all items, as any item accrued you took it on your books, didn't you?

A. No.

Q. What?           A. No, not necessarily.

Q. Well, didn't you accrue the vacation pay of the employees?       A. Yes.

Q. And all other items——

The Court: I'm not sure I understand just how that would be accomplished.

(Testimony of John M. Bloxom.)

Mr. Winter: They accrued a liability for vacation pay, your Honor.

A. I'd like to explain that particular item.

The Court: Well, your counsel can ask you about that. Just answer the questions on cross-examination.

Q. On what yearly basis did you file your income tax returns; was it on the calendar year or the fiscal year basis?

A. Fiscal year ending June 30.

Q. June 30 of each year? A. Yes.

Q. At what time of the year, approximately between what dates would you receive apples for storage, ordinarily?

A. During the fall months.

Q. During the fall months; that's September and October? [38] A. Yes, mostly.

Q. How early in September does the season usually start? A. The first.

Q. And ends up about when, in this area?

A. Late October.

Q. In other words, all of your apples would be stored during that particular two month period, approximately all of them? A. Most of them.

Q. How long ordinarily did you keep apples, and how long can you keep them in storage, approximately?

A. Some varieties up until the following July and August.

Q. Well, the majority of the apples are dis-

(Testimony of John M. Bloxom.)

posed of before June 30 of the succeeding year, aren't they?      A. The majority, yes.

Q. And it's just a few varieties and a few late apples and winter apples that can keep beyond that time?      A. Ordinarily.

Q. Ordinarily, yes. In other words, they spoil after that time, don't they?

A. Most of them do.

Q. If you don't have the bulk of them out by June 30 you're carrying a lot of it to the dump?

A. Outside of Winesaps that's true, yes.

Q. Now, the corporation's business, at least one of its businesses, was to store apples for customers, for growers? [39]      A. Yes.

Q. As I understand it you'd enter into an agreement to store their apples at a certain figure, and then you would pack them and ship them for them?

A. That's right.

Q. And you would make an accounting to them of your costs of storage, or costs of treating, and your costs of loading, and your overhead costs, and bill them for that?

A. We had charges covering those items.

Q. The charges included all of those items?

A. Yes.

Q. Including the corporation's profit, right?

A. Theoretically, yes.

Q. And ordinarily you also, the corporation also bought considerable apples for their own account, did they not?      A. That's right.

Q. Did the corporation have any orchards?

(Testimony of John M. Bloxom.)

A. Yes.

Q. And when you would bring in a lot, say, for John Jones it would be given a lot number, is that right?

A. Yes.

Q. And supposing that lot was in bulk, would that be put in a bin with other apples of the same type and character?

A. No.

Q. You'd keep that separate because those were his apples, is [40] that right?

A. Right. Whether we had bought them or not they would be kept separate.

Q. And you'd give a lot number to those apples?

A. Well, you would not have acquired a lot number yet; the name would be on the lot.

Q. Well, on February 28, 1944, the corporation owned considerable more than the 21977 boxes of apples, didn't they?

A. I don't know.

Q. What?

A. I don't know. I don't think they did, though.

Q. Was that all of the apples that they owned at that time?

A. I say, I don't know, but I'm under the impression without checking the records that that's nearly all they owned at that time.

Q. That was nearly all they owned?

A. I'd have to check to be sure.

Q. Well, in prior years the practice was to sell the apples for their own account, wasn't it?

A. For prior years their practice was the same

(Testimony of John M. Bloxom.)

as that year; they bought some and sold some for the growers.

Q. Did you ever make a distribution in kind of apples during any other year except this liquidation year?      A. No, but at the time——

Q. Who suggested the liquidation of apples? Was it Mr. Boyd, [41] your accountant?

A. No.

Q. Who suggested it?      A. I did.

Q. Were you familiar with several of the other liquidations in kind of situations that Mr. Boyd had recommended?

A. I was familiar with a couple of different cases.

Q. That Mr. Boyd was the accountant for?

A. Not necessarily, no.

Q. Well, he happened to be the accountant for those corporations, was he not?

A. No, those I had known about I believe Mr. Boyd had told me about it previously.

Q. Yes; in other words, the suggestion of the liquidation in kind came from Mr. Boyd, didn't it?

A. No, I brought it up.

Q. You just said he told you about them.

A. That was before I went with the Washington Fruit and Produce Company.

Q. But the corporation never attempted to make a liquidation or dividend in kind up until this liquidation year, is that right?

A. I can't answer that question. I wasn't with the corporation part of that year. I don't think so.

(Testimony of John M. Bloxom.)

Q. What you just said, you didn't know of any liquidation in [42] kind prior to that time?

A. I didn't know of any.

The Court: When did you start to work for this corporation?      A. September 1, 1943.

The Court: And you got your stock in December?

A. That's right.

Q. (By Mr. Winter): The agreement, Exhibit 2, the contract with the stockholders, was executed right at the same time as the liquidating or the dividend in kind was voted, wasn't it?

A. Yes.

Q. And it was understood that if you voted a dividend in kind that you would immediately enter into a contract and the corporation would sell the apples?

A. It was no doubt discussed at that meeting.

Q. Yes. In other words, it was understood that that was the procedure that you were going to take, isn't that right?      A. I think that's right.

Q. You say that the apples were identifiable as long as they were boxed, after they left your plant, is that right?      A. That's right.

Q. And if they were bulk of course they couldn't be identified except if the lot numbers were kept separate?

A. They were identifiable up until the time they were loaded in a car in bins. [43]

Q. Was it customary to put several lots into bins when they were sold in bulk?

(Testimony of John M. Bloxom.)

A. Oh, it was done sometimes; sometimes not.

Q. As a matter of fact in this particular instance some of the apples covered by the lot numbers had already been sold and disposed of; you found that out when you come to dispose of these apples, didn't you?

A. I haven't read this record for several years, but I don't remember that.

Q. You don't remember that such a thing happened?

A. No. It may be true, though.

Q. It may be true; in other words, you had a lot of apples of different lot numbers which were almost identical apples; you couldn't tell the difference, could you?

A. Well, I couldn't. I think some of our men could.

Q. Might have been able to tell the difference?

A. Yes.

Q. Well, you had a lot of very similar grades of apples, I mean identical grades of apples, from different growers?

A. Well, apples will vary from the same grower, so the natural practice——

Q. It's hard to tell which would be the better grade from either one or the other, wouldn't it?

A. Well, I could tell that.

Q. When did the corporation get its orders to ship the apples? [44] A day or two or three days or a month before they shipped them, ordinarily?

(Testimony of John M. Bloxom.)

A. During that particular season we didn't accept orders until we got ready to ship.

Q. You didn't accept orders until you got ready to ship?

A. During that particular season.

Q. Was there a ready market for apples at that time? A. Yes.

Q. In other words, it wasn't a question of getting the orders, it was a question of just merely accepting them and shipping, is that right?

A. Generally through that season that was the case.

Q. All of the orders were available?

A. I think that's right.

Q. And of course you knew at the time you executed this so-called sales agreement between the officers on one hand and the officers as stockholders on the other that the apples were sold, all you had to do was accept the orders?

A. That's substantially right.

Q. In other words, the corporation didn't have to go out and sell the apples for anybody; it wasn't to the stockholders' advantage to have the corporation sell them, was it? A. Yes.

Q. It was to the stockholders' advantage to have the corporation sell them, is that right? [45]

A. Yes.

Q. And it was also to the corporation's advantage to distribute them to the stockholders, is that what you intend to convey?

(Testimony of John M. Bloxom.)

A. I don't see any relation between those two questions.

Q. I didn't ask you whether you see any relation; I say, was it to the stockholders' advantage to have the corporation deliver the apples to them?

A. I thought so.

Mr. Velikanje: I don't quite understand that question.

The Court: I'm not clear what it means either. Perhaps if you rephrase it—

Q. (By Mr. Winter): Well, you said, Mr. Bloxom, that it was to the stockholders' advantage to have the corporation sell the apples for them. Now, is that true?      A. Yes.

Q. Was it to the advantage of the corporation that they distribute the apples to the stockholders?

Mr. Velikanje: I'm going to object to that, your Honor. Really I don't understand what he's driving at.

The Court: Well, I'll overrule the objection. If the witness can't answer the question he can say so.

A. I'd like to have that last question read again, please.

(Pending question read by the [46] reporter.)

Mr. Velikanje: I think that should be made more definite by referring what he means by "advantage" there. If he means tax advantage, that it was less advantageous to the government, we will admit that.

(Testimony of John M. Bloxom.)

The Court: I don't know just exactly what was intended. Perhaps you can make it more specific.

Mr. Winter: Well, the witness said that this was a good deal for the stockholders. I wanted to find out whether it was a good deal for the corporation, whether he considered it a good deal for the corporation.

Mr. Velikanje: I think that's immaterial, your Honor.

The Court: I'll overrule the objection.

A. It was a good deal for the corporation to have the handling, and sale of those apples, because they made a profit on the washing, storing and handling of the apples.

Q. You say they made a profit on the handling and storing of the apples? A. Yes.

Q. And do you say that they also made a charge for boxing and loading the apples?

A. Yes, they did. It's on your records there.

Q. You just show us where they made a charge or commission for sale of the apples; just show us on the books.

A. You didn't ask that question. They made no charge for [47] selling; they made a charge for washing and storage.

Q. Oh, the actual cost, which they expended and which they took a deduction for on their returns?

A. It wasn't cost; it was cost plus profit.

Q. What profit?

A. There was profit on those charges they made.

The Court: Just a moment here. Maybe I don't

(Testimony of John M. Bloxom.)

understand; these apples had all except the ones in bulk been packed at that time?

A. They were practically all in bulk, your Honor, at the time of this dividend.

The Court: What was the proportion in bulk and in packed boxes, roughly?

A. I would say at least 90 per cent.

The Court: 90 per cent in bulk and about 10 per cent packed?

A. That's very approximate. I haven't seen those figures for several years.

The Court: Well, the ones in bulk, did you pack many of them after that February 28?

A. We washed and sorted them all after that date.

The Court: After that date?

A. After that date.

The Court: They were just put in in bulk, orchard run? [48]

A. That's right.

The Court: When did you pack them?

A. After February 28th; I don't recall the dates.

The Court: All right, proceed.

Q. (By Mr. Winter): Do you ordinarily charge growers a commission for selling the apples?

A. We ordinarily do, but in that year we didn't.

Q. I just asked you whether you ordinarily charged other growers commissions for selling their apples for them. A. Not that year we didn't.

Q. You didn't charge any other growers for—

A. Oh, yes, we charged some.

(Testimony of John M. Bloxom.)

Q. Oh, you charged other growers for commission. Did you charge these stockholders any commission for selling their apples?

A. Our agreement with them was to give them——

Q. I asked you whether you charged these stockholders any commission or not? A. No.

Q. Now as I understand it, these apples were just stored there in bulk? A. Most of them.

Q. When you'd take a lot number in bulk, would you list them on your books in the number of boxes regardless of whether they were stored or not? In other words, if a grower would [49] bring in a carload of apples, would you list them in your records as one load, or one lot, or so many boxes, if they weren't boxed?

A. So many boxes delivered from that grower.

Q. Well, how do you arrive at the number of boxes when they come in in bulk? By weight?

A. They are bulk in boxes. What I mean by bulk apples, at the time they're delivered they're unpacked but they're in boxes.

Q. Oh, they're just put in boxes?

A. And are kept in boxes until they're loaded aboard car.

Q. And then of course they're culled out, and the number of boxes received will not necessarily be the number of boxes shipped, is that right?

A. That's right.

Q. These are just field run apples all boxed up

(Testimony of John M. Bloxom.)

which are kept with no numbers on them except as to lot number?

A. They're kept separate in storage.

Q. You mean in separate rows? A. Yes.

Q. And that has been the practice for years with everyone's apples? A. Yes.

Q. In other words, if I put in 500 boxes there I'm entitled to have my 500 boxes return. All of these apples were purchased [50] by the corporation, they were the property of the corporation?

A. Yes.

Q. And you decided that on February 28 you would, without delivering any of these boxes to the stockholders, that you would enter into this agreement, sell them for them, and just pay them the net receipts, is that right? Was that your intention? A. Whatever the agreement says.

Q. You didn't ever intend to deliver to the stockholders, to their warehouse or any place designated by them, the boxes of apples, did you?

A. That would not be to the advantage of the stockholders.

Q. I say, you didn't ever intend to do that, did you? A. No.

Q. You never intended that they should leave the warehouse, did you?

A. They had to leave the warehouse.

Q. Well, I mean until you as a corporation could take and sell them and collect for them and box them? A. That's right.

Q. The corporation was going to do this, and

(Testimony of John M. Bloxom.)

all the stockholders were to get out of the deal was the net receipts as distinguished from any other year, is that right?      A. As I recall. [51]

Q. Yes. Now, with respect to this storage of other produce or other property of the government; that was principally meat under that contract, wasn't it?      A. No.

Q. Well, a portion of it was meat?

A. There was considerable meat, yes.

Q. At what temperature do you store meat? Zero?

A. Fresh meat at zero, around zero, yes.

Q. You said that the storage you had on hand, I think you said most of the storage stuff you had on hand was kept at zero for the government?

A. I'm sorry, I didn't.

Q. Well, was it 50 per cent, 75 per cent?

A. No, I'd say probably not over 10 per cent was at zero.

Q. Then you said you had storage at 30 per cent?      A. 30 degrees.

Q. 30 degrees, I should say. What do you keep at 30 degrees, apples?

A. Salt meat and lard, which was the bulk.

Q. That was the bulk?

A. I believe lard was the biggest item.

Q. How long ordinarily can you keep lard and salt meat in storage? Five years is not unusual, is it?

A. I don't know; we've never had it over a few months at a time. [52]

(Testimony of John M. Bloxom.)

Q. Over two months? A. A few months.

Q. Matter of fact you know that Armour keeps it for five and seven years?

A. No, I didn't know that.

Q. Even as long as thirty years ago when I was working there we had meat there for five years, salt meat, is that right? A. I wouldn't know that.

Q. Well, it doesn't deteriorate as far as you know, salt meat?

A. It didn't during the few months we had it.

Q. You just kept it a very few months, then, is that right?

A. While the ships were waiting to load.

Q. Was that the practice of the government, just to keep their produce a few months, or their stuff a few months?

A. Most of what they stored out here was waiting for transshipment to Russia, waiting on ships to handle it.

Q. It was anticipated it would be very short storage, is that right?

A. Five to six months, mostly.

Q. Almost less storage than the time for apples, is that right?

A. So far as we were concerned.

Q. Was there considerable eggs stored at that time by the government? [53]

A. I don't know. We didn't store any for the government.

Q. You didn't, as I take it, as a matter of practice, then, the corporation didn't, whether because

(Testimony of John M. Bloxom.)

of the short months or short time the stuff was there, at least the corporation didn't accrue the storage until they shipped it out, is that right?

A. The corporation didn't know that it could accrue.

Q. Well, it didn't do it. You didn't answer my question. Please answer my question. You didn't do it, did you?      A. No.

Q. Did you keep the books?      A. No.

Q. Did you have anything to do with the accounting?

A. As much as the secretary-treasurer would, yes.

Q. Who did Miss Walker, you say, who did she work under?      A. Under Mr. Plath.

Q. He gave her all instructions as to the method of accounting, did he?      A. Yes.

Q. Then you didn't have anything to do with the accounting?      A. That wouldn't be right.

Q. That wouldn't be right?      A. No.

Q. Well, did you have anything to do with it, or did Mr. Plath do it?

A. I had as much as any secretary-treasurer would have, yes. [54]

Q. Well, did you, or didn't you, or did Mr. Plath take charge of the accounting as to the way the books were kept?      A. Mr. Plath was manager.

Q. Mr. Plath was manager and Miss Walker was under him; any questions about bookkeeping he discussed with her, did he?

A. She discussed them with me, too.

(Testimony of John M. Bloxom.)

Q. Well, did she ever discuss with you the method of accounting to be used on your income tax returns?

A. She had nothing to do with the income tax returns.

Q. Well, do you know what method of accounting you reported?

A. As far as I know it was the accrual method.

Q. Well, you accrued everything except the amounts due on this storage on these government contracts, didn't you?      A. No.

Q. What didn't you accrue?

A. Didn't accrue any storage.

Q. Well, all of your apples were shipped before June 30, you say, the majority of them?

A. No, they were not.

Q. And you charged them so it came in the fiscal year, didn't you?

A. All apples were not shipped by June 30.

Q. You said almost all of them, didn't you?

A. I said most of them.

Q. As a matter of fact I think you said that that is the [55] usual practice in the apple industry, because of the short period of time that they accrue it, they accrue the storage as they're shipped out?

A. Just like we did to government meat; we charged it when it went out.

Q. Well, you accrued and charged all the government meat storage as it was sent out, is that right?      A. That's right.

(Testimony of John M. Bloxom.)

Q. Did you claim all the expense in connection with the storage on your return, including the vacation pay?      A. I don't remember on that.

Q. You don't remember that?

A. No, I don't.

Q. Do you know of any expense that you didn't accrue?      A. I don't remember.

Q. As a matter of fact you accrued all the electricity, costs of running the cold storage plant during all that period of time, didn't you?

A. Oh, yes.

Q. You accrued all of the wages of the employees which weren't paid as of the end of the fiscal year, didn't you?

A. All the wages were paid at the end of the fiscal year.

Q. Well, I say, if there were any wages that were unpaid, if they had accrued they were accrued, weren't they? You accrued them as they became due, didn't you? [56]

A. Paid them as they became due.

Q. Well, you also accrued vacation pay which wasn't due, didn't you?      A. Yes.

Q. Yes.      A. Vacation pay, that's right.

Q. You charged all of your expense which had accrued or did accrue, you charged those on the books by the end of the fiscal year, didn't you?

A. We intended to, yes.

Q. Yes, you intended to. Do you have your retained copy of your income tax return?

(Testimony of John M. Bloxom.)

Mr. Velikanje: What do you want, the corporate?

Mr. Winter: Yes.

Mr. Velikanje: For what year?

Mr. Winter: The fiscal year ending April 29, 1944.

(Whereupon, corporate income return for year 7/1/43 to 4/29/44 was marked Defendant's Exhibit No. 5 for identification.)

Q. (By Mr. Winter): Your counsel has handed to me what purports to be the retained copy, the corporation's retained copy of their corporation income and declared excess profits tax return for the fiscal year beginning 7/1/43 and ending April 29, 1944, with certain schedules attached. Is that the copy of your return as filed for that year? [57]

A. Yes.

Q. Does the return show the basis of accounting which was employed by the corporation in keeping its books?

Mr. Velikanje: I think it will speak for itself your Honor.

Mr. Winter: We'll offer in evidence the return.

The Court: Any objection?

Mr. Winter: I might say, your Honor, that the reason I don't have the original return, I got a call from Mr. Frank Freeman, Assistant United States Attorney, and I guess your Honor heard that Harvey Erickson broke his leg.

The Court: Yes, the United States Attorney,

(Testimony of John M. Bloxom.)

Mr. Erickson, had an accident and broke his leg, I heard this morning, is the reason he isn't here.

Mr. Winter: Mr. Erickson was going to be here, your Honor, and he had his brief case at home, and Frank called me and said he has three exhibits in his brief case and wanted to know if he should airmail them over; I said no, I think I can get by without them. I can get the original return, but we can substitute a copy for the retained copy.

Mr. Velikanje: I will file no objection to this, however I would like it shown as merely the pencilled copies, so if there was any error made, this is Mr. Boyd's [58] work.

Mr. Winter: I would like to substitute the original.

The Court: Why don't you put the copy in for the purpose of this case, with the understanding that the original may be substituted.

Mr. Winter: That I may substitute a photostatic copy of the original.

The Court: That will be agreeable. It will be admitted with the understanding that a photostatic copy of the original may be substituted.

(Short recess.)

### Cross-Examination

(Continued)

By Mr. Winter:

Q. Mr. Bloxom, showing you plaintiff's Exhibit 3, referring to the first sheet there, you'll notice an

(Testimony of John M. Bloxom.)

item there, Mr. Bloxom, "Handling culls," a charge of \$89.76. As a matter of fact that is stricken out and not computed in there, and not added in. There's another charge that wasn't charged against the stockholders in that computation, is that right?

A. Yes, according to the agreement it was allowable.

Q. In other words the corporation didn't charge the stockholders, in addition to the commissions, they didn't charge them for handling culls, is that right? A. Yes.

Q. Now, I think you said that the majority of the apples were all delivered prior to June, the end of June, ordinarily, [59] in every year, prior to the end of June of the succeeding year, were either sold or—the majority of them? A. Yes.

Q. Now, just tell us when the corporation marketed these apples here in question in this dividend. Can you refer to the exhibit and tell us when they were marketed?

A. It was prior to June 30.

Q. Yes; as a matter of fact it was begun on March 4, 1944, or about three days after the agreement, and all of the apples, which was all of the apples which the corporation had, as you said a few minutes ago, were marketed by April 20, 1944, isn't that right?

A. I don't know without looking.

Q. Well, look in the exhibit and tell us when the last of them were——

A. There's no dates on here, I don't think.

(Testimony of John M. Bloxom.)

Q. Well, as a matter of fact you recall that it was in April, before the end of April, that all of the apples that the corporation owned in this particular year were marketed, then?

A. No, I don't recall that.

Q. Well, would you say it isn't true?

A. No.

Q. Well, have you any records to show us when the last of these apples were marketed? Is it conceded, counsel, that they were all marketed by April 10, 1944, which was all the [60] apples this corporation owned?

Mr. Velikanje: I'll have to check that, Mr. Winter, before I can concede it.

A. I can clear up that point; there would be no point in holding them beyond April, because if you want to hold apples into June, July and August they'd have to be packed earlier than this in order to keep late.

Mr. Velikanje: Then you'd say they were all sold?

A. I'd say they should have been sold in April.

Q. (By Mr. Winter): Would you accrue all those packing charges for those that had to be sold after April?

A. I believe it was the custom of the company to accrue the packing expenses.

Q. And the only thing you wouldn't accrue would be the accrued storage charges, is that right?

A. My understanding from Mr. Plath was they never accrued storage charges.

(Testimony of John M. Bloxom.)

Q. Until they were shipped? A. Yes.

Q. Well, as a matter of practice and convenience it was easier, because they would all be shipped, practically, before June 30, to accrue them as a matter of bookkeeping when they were shipped, is that right? A. No.

Q. Well, wasn't it much more convenient to do it that way, to [61] accrue them when they were shipped rather than accrue them each month?

A. It was more convenient, yes.

Q. Yes, and that's the reason why it was done, wasn't it? A. No.

Q. Well, you accrued all your wages, you accrued all your packing charges the end of the year, didn't you?

A. We charged the packing; that's only one charge for each grower.

Q. And then it was more convenient to wait and make just one charge for the accrual, is that right, for the storage, I mean?

A. No, there was more than one charge made for storage, as a rule.

Q. Well, your storage was accruing each month, wasn't it? As long as they stayed there you would be accruing storage, is that right? A. No.

Q. Well, if you accrued the storage——

The Court: I think perhaps the word "accrual" may be a little unfair. You mean it accumulated each month?

Mr. Winter: Yes.

(Testimony of John M. Bloxom.)

The Court: Your storage charge is by the month, isn't it?

A. No, your Honor. It was on this government stuff, but not on apples. [62]

The Court: What do you charge for the storage of apples?

A. It accumulates for about two or three months, and after that it stays the same for several months, until May 1, and then it starts by the month again.

The Court: The amount of the charges depends on the length of time the apples are kept in storage?

A. Yes.

Q. (By Mr. Winter): Ordinarily, as in this case, you had shipped all the apples by April 20, 1944; in other words the majority of the apples ordinarily were shipped by that time?

A. The majority of these apples.

Q. Yes. Well, these were all the apples you owned that year, weren't they?

A. I think I testified on that that as I recall these were most of the apples we owned. Of course we had other apples in storage that we were storing and handling besides these.

Q. Do you have a printed or any other document which would show your charges made to customers for storage and packing during that particular year, a schedule?

A. No, we have no schedule; I'd have to go back to the original growers' records. We had various deals with various growers.

(Testimony of John M. Bloxom.)

Q. Would some growers be charged more than other growers? A. Yes. [63]

Q. Would that depend upon the size of the storage commodity, I mean on the——

A. Oh, in a general way, yes.

Q. In other words, you would store a large shipment of apples at a unit price cheaper than you would a small shipment?

A. No, just a larger grower is in a position to bargain for a better deal.

Q. Well, did you consider the stockholders a larger grower or a smaller grower when you were dealing with yourselves?

Mr. Velikanje: Your Honor, I think that's immaterial and argumentative, because they have a written agreement here as to what their action was.

Mr. Winter: Well, I'm just wondering whether they drove a hard bargain or a good bargain, the same as large growers did.

The Court: I'll overrule the objection.

A. The corporation would have been glad to make this same deal with anyone else as they made with the stockholders to handle those apples.

Q. Will you look at Exhibit 3 and tell us how many boxes of the Quandt lot were supposed to have been distributed in kind to the stockholders?

A. May I have the minutes?

Mr. Velikanje: May I have the minutes?

Mr. Winter: Well, I thought he could look that up [64] from the exhibit. I know how many were supposed to be.

(Testimony of John M. Bloxom.)

Mr. Velikanje: Your Honor please, all these exhibits are to be read together. This man has asked to see the minute book to answer this question. I don't see any sense in trying to use these tactics.

Mr. Winter: I just wonder if he can tell us how many of the Quandt lot were supposed to be distributed and how many were actually sold. That's supposed to be a statement.

The Witness: This is how many were sold, but I don't know how many were distributed.

Q. (Mr. Winter): Well, as a matter of fact when you come to distribute and sell the Quandt boxes part of those apples had already been sold to somebody else in that mix-up?

A. I don't know that.

Q. Well, do you recall that there was a mix-up of some of the apples, that the identical lots were not able to be sold because they had already been sold and disposed of?

A. As I recall we found one lot had been partially packed but not sold.

Q. And that was packed by the corporation for its own account, is that right?

A. Had been packed by the corporation for its own account.

Q. And what did you substitute when you made your sale and you packed, for those apples which had been boxed and not sold, [65] from some other lot?

A. I think we substituted the packed apples in-

(Testimony of John M. Bloxom.)

stead of the field run apples. This has been several years since I've seen this.

Q. In any event there was some mix-up in the apples; they weren't distributed in accordance with the exact language of the resolution, is that right?

A. Well, it would appear that way from this; I didn't recall this.

Mr. Winter: That's all.

### Redirect Examination

By Mr. Velikanje:

Q. Mr. Bloxom, as a matter of fact it was the Perry lot, was it not, that this mix-up had come in?

A. I think so.

Q. And you state your recollection on that is that these apples had been packed but not shipped?

A. That's my recollection, so we charged packing charges against them and shipped them and sold them.

Q. Now, you asked before to explain this pay of employees as to accrual. What did you want to say on that?

A. Well, it has been customary at the end of our fiscal year, June 30, to give a bonus to our employees. This particular year we closed our fiscal year at the end of ten months and the employees were not entitled to a bonus for another two months, but we accrued ten-twelfths of what we felt they had, [66] and they were paid on June 30.

(Testimony of John M. Bloxom.)

Q. In other words, that was a bonus instead of a vacation pay?

A. I believe it may have been—it—wasn't vacation time yet; we may have accrued ten-twelfths——

Mr. Winter: Well, the return is the best evidence and shows what it is. That's one of the purposes of the return.

The Court: Well, finish your answer.

A. It could very well be, I haven't referred to it for several years, but it could very well be that we accrued ten-twelfths of the vacation pay that was due the employees, but the vacation was not yet due, or the vacation pay was not yet due on that date, but that's the only year we ever accrued that, because that's the only year we ever closed before the end of the fiscal year, that's my point.

Q. Now, in previous years or in some years had the company stored potatoes?           A. Yes.

Q. Would those potatoes be in storage some time on July 1?           A. Yes.

Q. What did you do about storage on those potatoes?

The Court: I may be mistaken about the testimony, but I thought this witness went into the employ of the corporation in September, 1943. How would he know what [67] was in storage on July 1 of 1943?

A. Told by the manager.

The Court: That's obviously hearsay.

(Testimony of John M. Bloxom.)

Q. All you would know, then, would be what you were told of it?      A. By the manager.

Q. Were any potatoes ever stored at Perham Fruit?      A. Yes.

Q. While you were there?      A. Yes.

Q. What did Perham do as to potatoes that were in storage on July 1, as to storage charge?

A. As I recall, they were not accrued.

Q. Was the crop or the sales year of 1943-44 a different year than other years we've had in the Yakima Valley relating to fruit?

Mr. Winter: With respect to that last question we ask it be stricken. The witness says "As he recalls." We think the books are the best evidence. Our information is that they accrued everything they possibly could, and we'll ask that the answer be stricken as a conclusion of the witness, and not definite at that, and the books are the best evidence. If they're going into these other matters we want the books here.

The Court: What was that question? [68]

(Whereupon, the reporter read the last complete question and answer.)

The Court: As I understand, this is simply to show what the general custom was in the accounting, as to accrual of storage charges?

Mr. Velikanje: That's right.

The Court: I'll overrule the objection, then. We don't want to bring in Perham's books, certainly.

Mr. Velikanje: No, I think they'd object.

(Testimony of John M. Bloxom.)

Q. (By Mr. Velikanje): Mr. Bloxom, was the fruit and sales year of 1943 to 1944 different than any other year, as to the crops and——

A. I believe it was different from any other year I can recall.

Q. For what reason?

A. Well, because of the very light crop and the very heavy demand for apples, and the ceiling price on the apples quoted by the OPA.

Q. Was there trouble in that year of finding enough apples to even get into storage, or fruit to get into storage?      A. Yes.

Q. Why were lots marked? I mean for what purpose? That is, I'm referring now to fruit that the corporation bought outright; why would those lots be marked so that they could be followed: [69]

A. Well, most of the time we bought them on the basis of the way they would grade out, so we'd have to keep them separate until they were graded out so we'd know how much to pay the growers, but that particular year I believe we bought quite a few apples field run, just all one price, field run, and so in that particular case we'd only have to keep the lots separate so that in case there was some trouble with the customer at destination we could identify the trouble in some particular grower's lot, that hadn't kept or carried as well as some other grower's fruit.

Q. For your own information, to know where those had come from?      A. Yes.

(Testimony of John M. Bloxom.)

Q. Why was there no commission charged in the sale of this fruit?

A. Because the corporation's agreement with the stockholders was they would give them as favorable a deal as any other customer of the corporation.

Q. And did you have other agreements that didn't provide for the charging of commission?

A. That particular season we did.

Q. Was that merely to get storage?

A. Yes.

Q. And handling charges?

A. And washing and sorting. [70]

Q. Now, all of the stockholders of the corporation were present at this meeting when this dividend was declared, is that correct? A. Yes.

Q. And that was yourself, Mr. Plath and Mr. Lynch? A. Yes.

Q. Those were the only stockholders of the corporation? A. Wait a minute——

Q. Were they all active in the business?

A. I answered that wrong. We represented all the stockholders, but I believe, my wife is a stockholder and so was Mrs. Plath and her two children at the time.

Q. I don't believe they were at that time.

A. My wife was.

Q. Your wife was, but there was the Bloxom interest, the Lynch interest, and the Plath interest, correct? A. That's right.

(Testimony of John M. Bloxom.)

Q. Were Mr. Lynch, Mr. Plath and yourself all active in the business?      A. Yes.

Q. You all took an active part in the business, devoting your full time to the corporation, isn't that correct?      A. Substantially.

Q. I'm not saying your exclusive time, but I mean——      A. Substantially full time. [71]

Q. Yes. Now, Mr. Bloxom, had these trustees sold their fruit to an independent broker, we will say the John Doe Fruit Company, would it through normal custom have been the usual procedure to withdraw the fruit from your warehouse?

Mr. Winter: Now, if the Court please we'll object to that as asking the witness—he's not qualified as an expert, he's asking him to assume facts that are not here, they didn't do at all; the sole question in this case is whether or not there was any attempt to distribute and make a valid dividend to the stockholders, or whether or not there was merely an assignment of the income which they were getting on the sale of these apples, for which they already had apples and loads of orders. They didn't need any orders.

Mr. Velikanje: The testimony was there were no orders.

The Court: That goes to the general character of this transaction. I think they would be permitted to show the custom. Overruled.

(Pending question read by the reporter.)

Q. (By Mr. Velikanje, adding): ——for stor-

(Testimony of John M. Bloxom.)

age or handling at a different place?           A. No.

Q. What is the normal custom and procedure?

A. The normal custom and procedure is to have it washed and [72] sorted and loaded at the place where it is stored, for the best interests of the fruit.

Q. Now, Mr. Winter asked you if the reason that you didn't accrue storage was due to the fact that it was more convenient not to accrue it, to which you answered no. What was the reason that you didn't accrue storage?

A. I think there's several reasons. First, in the case of many customers they couldn't pay it if you did charge it to them, until the merchandise was sold and the money realized from the sale to pay the storage. Another reason is that there is always the question of liability for the way the fruit kept, fruit and other merchandise kept, and most customers wouldn't pay their storage bill until it's all shipped from storage and they felt that the storage company had the money coming. That's substantially—that is just not the custom of the industry to charge storage until the merchandise was shipped from the plant.

Mr. Velikanje: That's all.

### Recross-Examination

By Mr. Winter:

Q. You never collect for storage and packing at any time until it is sold, do you?

(Testimony of John M. Bloxom.)

A. Yes, we've collected for packing.

Q. But it's the usual custom to collect for storage when the fruit is shipped, but we're not talking about collection, Mr. Bloxom, we're talking about whether or not you had earned that [73] storage. Did you earn that storage every month?

A. No.

Q. In other words, if you kept something for a month you hadn't earned any storage, is that your answer?

A. The packing is earned when the fruit is packed, and is payable at that time, and a good share of the time interest is charged on the packing. Storage is not considered due or payable until it's shipped from the plant.

Q. We're not talking about due or payable; we're talking about whether or not it is earned. What do you collect storage for? For keeping merchandise in your warehouse, don't you?

A. Until it's shipped.

Q. I say, for keeping it in your warehouse?

A. Yes.

Q. And the more months it's there the more storage you charged, didn't you?

A. No.

Q. I thought you got through saying that storage is for a certain period of time? A. It is.

Q. And then for several months it doesn't increase, and then it does increase, is that right? In other words, your storage is charged for the length of time it's there, whether it's one year or five? [74]

(Testimony of John M. Bloxom.)

Mr. Velikanje: Mr. Winter, why don't you let him answer one of these questions?

The Court: Well, yes, now you may answer.

Q. Is that right?

A. Storage on fruit increases, the amount of charge increases each month for the first two months. After that it stays the same for probably five—until May 1st.

Q. Well, when you got these apples in there they had earned two months storage after they had been there two months, hadn't they? A. Well—

Q. Didn't you have two months' storage charges due on that? A. No.

Q. You didn't have any two months' storage charge? You were keeping it there free, is that right? A. You said "due."

Q. I say earned.

The Court: I doubt if this cross-examination is too helpful. It's obvious what the situation is.

Mr. Winter: Yes, your Honor.

Q. (By Mr. Winter): Now, Mr. Bloxom, you say in this particular year you bought these apples not on the number of boxes but bought them on the number of boxes which they would grade out, is that right?

A. No, we bought that year a good many apples just as they [75] came from the orchard, so many pounds of apples out of the orchard, so much per pound.

Q. Well, did you buy any of these boxes on the basis of the amount they would grade out?

(Testimony of John M. Bloxom.)

A. I'd have to check each individual lot to answer that.

Q. Well, did you some of these lots?

A. Some of these lots? I don't recall. It's five years.

Q. Well, if you did buy them on that basis you wouldn't know what they cost you until you grade them out, would you?

A. Yes, we very often did at that time and still do very often go in and take a sample grade and settle with the grower at that time.

Q. Well, you know approximately what they'll grade out, but you don't know exactly, do you?

A. We pay them in final settlement on the sample grade, very often.

Q. But other times you insist on waiting until they all grade out before you make your settlement, isn't that right?

A. No, that's not right.

Q. You never do that?

A. We don't insist on it, no. If a grower wants——

Q. Well, does the grower ever insist on it?

A. Occasionally.

Q. Yes, and until it does grade out he doesn't know exactly how much he's going to get, does he? [76]

A. Yes, if he wants to make a sample grade, which most of them——

Q. Well, if he doesn't want to take a sample grade, if he insists on an actual grade, he doesn't

(Testimony of John M. Bloxom.)

know how much he's going to get except approximately, is that right?

A. If he doesn't want to take a sample grade, which most of them prefer.

Q. Because they want their money then?

A. They want their money early.

Q. In other words, they're willing to take a chance then?           A. Uh huh.

Mr. Winter: That's all.

### Redirect Examination

By Mr. Velikanje:

Q. Mr. Bloxom, on this storage what does the word "in" and "out" mean, in normal storage charges?           A. May I see just what you——

The Court: It means the handling of the apples, getting them in and out, doesn't it?

A. The government?

Q. The government or any storage contract, don't you make a charge the first month which includes the handling charge of bringing them in, and also shipping them out again?

Mr. Winter: Are you talking about the handling charge, or storage charge?

Mr. Velikanje: Well, it's in the storage [77] charge.

The Court: The item of in and out is on the——

Mr. Velikanje: ——government contract.

Q. (By Mr. Velikanje): In this government contract, which is Exhibit 4, it states "First month

(Testimony of John M. Bloxom.)

or fraction there” we’ll say lard or tallow, .3026, and with asterisks down at the bottom it says “It is understood that all regular charges, including storage, handling in and out, and furnishing performance bond, are made a part of the rate for the first month. The rate for each subsequent month is for storage only.” What is this “in and out” cost?

A. That’s to cover the charge of receiving it and loading it, which is applicable regardless of the length of time the merchandise is in storage.

Q. So the “in and out” and some of the storage would not be earned until it had moved out, is that correct? A. Yes.

Mr. Velikanje: I believe that’s all.

The Court: Mr. Bloxom, do you know whether all these apples that were distributed as dividends had been paid for before the distribution?

A. My impression is they were, your Honor, but I’d have to check the original records to be sure of that.

The Court: They were all Winesaps, weren’t they?

A. Yes.

The Court: The Winesap is about the latest keeping [78] variety, isn’t it?

A. The Winesaps are the latest in any quantity. There are some Newtons that keep late.

The Court: And Ben Davis, but you don’t have any of those?

A. Not here.

(Testimony of John M. Bloxom.)

The Court: The Newton isn't a very popular variety either?

A. Not here.

### Recross-Examination

By Mr. Winter:

(Whereupon, computations of vacations payable was marked Defendant's Exhibit No. 6 for identification.)

Q. I'll show you what has been marked for identification Defendant's Exhibit 6, and ask you whether or not you have ever seen that computation before, as secretary-treasurer? Well, to shorten it up, that's a statement or a computation of the vacation pay which is accrued on your income tax return as filed with the government, isn't it, and furnished to the Collector's office?

A. I mentioned the method of figuring it, which has been used here, but whether these are the exact figures I don't know.

Q. As a matter of fact that's a computation of how you computed and accrued the vacation pay, isn't it, that Exhibit 6? [79]

A. That particular year, which is the only time we ever did it, yes.

Q. Well, I say, that is the accrual which you accrued in that particular year?

A. That's the method we used.

Mr. Winter: We'll offer Exhibit 6.

(Testimony of John M. Bloxom.)

The Court: Any objection?

Mr. Velikanje: I have never seen it.

Mr. Winter: It was furnished by Mr. Boyd.

Mr. Velikanje: What is that taken from?

Mr. Winter: Well, it's taken from his books and records; it shows how he computed it on the return.

Mr. Velikanje: I don't find any such page in this tax return.

Mr. Winter: No, it isn't a page; it's reflected in your accruals on the return, and shows the breakdown of it. Is that right?

Mr. Boyd: I don't know offhand; I presume it's right.

Mr. Winter: Well, is it on your typewriter? Did you type it and furnish it to us?

Mr. Boyd: Well, we have twelve typewriters, and I don't know which one it would be.

Mr. Winter: It's your statement; it came from your office. [80]

Mr. Boyd: Well, couldn't this be put in by the party that received it from me, because I don't remember it right at this moment; I presume it's right.

Mr. Winter: Well, I'll call the agent.

The Court: Wait for additional identification, then; if it isn't admitted or if there's objection to it we'll pass it for the time being. Any other questions of this witness?

Mr. Winter: No, I think that's all, your Honor.

The Court: You may be excused, then.

(Whereupon, the witness was excused.)

(Noon recess.)

(All parties present as before, and the trial was resumed.)

### C. WALTER OLOFSON

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Velikanje:

Q. What is your name?

A. C. Walter Olofson.

Q. What is your business, Mr. Olofson?

A. I'm a certified public accountant.

Q. With whom are you associated?

A. The firm of Boyd, Olofson and Company.

Q. Where are their offices?

A. 506 Miller Building, in this city. [81]

Q. Mr. Olofson, what was your training, what colleges have you attended, and what schools?

A. Well, I am not a graduate of a resident college; high school education, and correspondence study in accounting.

Q. How long have you had your C. P. A.?

A. Since 1936.

Q. And what have you been doing since 1936?

A. I have been practicing public accounting.

Q. Where?           A. In Yakima.

(Testimony of C. Walter Olofson.)

Q. Mr. Olofson, in your work as a public accountant have you done any work for what's known as Produce Row, or the fruit warehouses in the Yakima district?

A. Yes, I have, a considerable amount.

Q. You are familiar with what I refer to as Produce Row?           A. Yes.

Q. That is a grouping of the majority of the cold storage and warehouse plants in Yakima, is it not?           A. That's right.

Q. Mr. Olofson, at the present time could you estimate what percentage of the warehouses in the Yakima District that your firm represents?

A. You mean the city of Yakima, adjacent to the city?

Q. Well, let's say Produce Row.

A. I haven't counted them up, but I think 75 per cent, perhaps [82] it's 80 per cent.

Q. Did you also represent the Washington Fruit and Produce Company—           A. Yes.

Q. —as a corporation, and do you now as a partnership?           A. That's right.

Q. Where is the Washington Fruit and Produce Company located, and where was it located?

A. On North First Avenue; I don't remember the number, it must be about 401 North First Avenue.

Q. Does North First Avenue have another name?

A. Fruit Row.

Q. Is that the Produce Row that you have referred to, or Fruit Row?           A. That's right.

(Testimony of C. Walter Olofson.)

Q. Mr. Olofson, through your past experience are you able to testify as to what the custom is on Produce Row as to the accruing of storage charges or the non-accruing of storage charges, or how it is handled?      A. Yes, I think so.

Q. Would you, please?

Mr. Winter: Now, if the Court please—you mean you're asking this witness to testify as to a custom, as to the custom of accruing storage costs on other corporations' books? [83]

Mr. Velikanje: The custom on Produce Row.

Mr. Winter: Well, we object, if the Court please, on the ground that it's irrelevant and immaterial, not within the issues in this case, and has absolutely no probative value on the question involved in this case, and that is whether or not this taxpayer's books of account properly reflected its income from the fiscal year ended April 29, 1944, by reason of the way they handled these accruals on their books. It isn't a question of whether or not somebody else may have—under the law, and the regulations, a taxpayer is required to keep his books and report his accounts; it's mandatory, the statute and the regulations so provide, upon a basis which will properly reflect the income in a taxable year, and every taxable year is a different period, and the fact that someone else might keep them in

(Testimony of C. Walter Olofson.)

a way that might properly reflect it, we have no way of testing the way they kept them, we don't know on what basis they reported, whether they used cash receipts and disbursements, a completed contract, or on an accrual basis, and we object to it.

The Court: I'll overrule the objection.

Q. (Mr. Velikanje): You may proceed, Mr. Olofson.

A. Well, in general the practice of the Row is to set up the storage charges after the commodity has been shipped. [84]

Q. Then it is not the custom to accrue it from month to month?           A. No, it is not.

Q. Were you familiar with what the Washington Fruit and Produce Company did in their business prior to their dissolution in 1944?

A. No, I don't think I am.

Mr. Velikanje: That's all, you may inquire.

### Cross-Examination

By Mr. Winter:

Q. Did you prepare the return for the corporation for the fiscal year ending April 29, 1944?

A. No.

Q. Did you have anything to do with it?

A. No.

Q. Then you're not familiar with the fact that on April 29, 1944, they accrued all of the storage ac-

(Testimony of C. Walter Olofson.)

counts, for liquidation purposes, including all of the storage accounts which are here in question?

A. Oh, I think I knew that.

Q. Yes, you knew they accrued it all in their return, and it's so shown, for liquidation purposes?

A. I think that's right, I believe I know that.

Q. And those accruals hadn't theretofore been reflected in the books of the corporation except for liquidation purposes, did you know that? [85]

A. I don't know that.

Q. You say you're familiar with about 75 per cent of the corporations on Produce Row, as to the way they handled their books?

A. I said that our clients numbered about 75 per cent.

Q. Have you worked on all of their cases?

A. In greater or less degree.

Q. Isn't it a fact that all of those corporations are on a fiscal year basis, that is, on a fiscal year ended after June 30 of each year?

A. No, I don't think so.

Q. Most of them?                   A. Yes.

Q. The reason they're on the fiscal year basis is that by June 30 practically all of the apples have been shipped, is that right?

A. It's their natural business cycle.

Q. Yes; there's no apples on hand, to speak of, as of the end of the year, June 30?

A. That's right.

Q. In other words, then, would it make any difference whether they were on an accrual or cash

(Testimony of C. Walter Olofson.)

receipts and disbursements basis so far as that particular year, in accruing for storage charges?

A. For income tax purposes? [86]

Q. For income tax purposes. A. No.

Q. In other words, it is reported as having been received in cash, all of the storage charges, because they have all been earned and collected?

A. Would you repeat?

Q. I'll strike it. Supposing all of the apples had been shipped by June 30, at which time they had made their charges for storage, then you would report all of the storage charges in the fiscal year, and it wouldn't make any difference whether they were reporting on an accrual or a cash basis, would it? A. That's right.

Mr. Winter: That's all.

Mr. Velikanje: That's all.

(Whereupon, the witness was excused.)

The Court: One thing that isn't reflected in the pleadings here that I had wondered about, I don't know whether there's any disagreement regarding it; what happened to the storage facilities of this corporation after April 29? Did they go on and keep this government goods in storage and then the storage charges collected were distributed to the stockholders?

Mr. Velikanje: That's right; I'll bring that out from Mr. Boyd.

The Court: I see, all right. I wondered about that, [87] just what had happened after the liquida-

tion so far as the warehouse operations were concerned.

P. J. LYNCH

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Velikanje:

Q. Your name is P. J. Lynch?

A. Yes.

Q. Mr. Lynch, you were one of the stockholders of the Washington Fruit and Produce Company, a corporation?

A. I was, yes.

Q. When did you become such a stockholder?

A. In 1924.

Q. In the year 1944 how many other stockholders were there?

A. I think there were three, as I remember; maybe four.

Q. There was the Plath interests—

A. The Plath interests, and my interests, and—

The Court: Well, I understood, counsel, if I'm wrong I think we can shorten this, I think they were all the plaintiffs in these cases, weren't they?

Mr. Velikanje: No, not at that time, because the children didn't come in until the dissolution, I mean the transfer of the stock.

The Court: Oh, that's right.

Mr. Velikanje: I think it can be stipulated that

(Testimony of P. J. Lynch.)

they were the Plath interests, the Lynch interests, and [88] the Bloxom interests.

Mr. Winter: Yes, they owned all the stock.

Q. (By Mr. Velikanje): Were you present at the trustees' meeting on February 28, 1944?

A. I was.

Q. What transpired at that meeting, just briefly?

A. Well, we set out a certain lot of apples to be used as a dividend in kind.

Q. Mr. Lynch, did you know where those apples were? A. Yes.

Q. Could you go down and physically examine each lot as listed in the minutes?

A. In the minutes of the book?

Q. Yes. A. Now?

Q. No, on February 28; not now. I'm afraid they would be in bad shape by now. On February 28 of 1944. A. Yes, I think I could.

Q. Were you periodically in the cold storage rooms? A. Yes.

Q. Were you familiar with how those apples were kept? A. Yes.

Q. Was each lot distinguishable from another lot by some marking or notation?

A. They had the grower's name on the front of the pile, where [89] they were piled in tiers.

Q. And were they separated so that lots could be distinguished? A. Yes.

Q. Were all of the stockholders, that is, with the exception of Mrs. Bloxom, actively engaged in the operation of the corporation?

A. They were.

(Testimony of P. J. Lynch.)

Q. Did you execute Exhibit 2? A. Yes.

Q. That is your signature? A. Yes.

Q. Did you voluntarily enter into this agreement? A. Yes.

Q. Mr. Lynch, what would have been the procedure had these apples been sold through an independent broker? Now, as procedure, I mean would they have been taken from your warehouse normally, or what would have happened if these apples had been sold through an independent broker?

Mr. Winter: Same objection, your Honor.

The Court: Yes, the record may show an objection by the government counsel. Overruled.

A. Well, it would depend upon what the condition of sale might be. If they could have sold them ahead of time, had them broken out, that would have been one thing, and if they sold them for future loading, why, they would remain just where [90] they were until they were loaded.

Q. But you say if they were broken out; what do you mean by your first statement?

A. Well, in the fall of the year sometimes they sell——

Q. No, I'm figuring as of the 28th of February, not the fall of the year.

A. Well, there's two ways of selling them. You could sell them and have them paid for and leave them sit there in the cold storage with the government certificate to identify the lot, and then you could sell them as they weighed out, each lot would be recognized by a number, if they were packed; if they were loose they'd lose their identity when they

(Testimony of P. J. Lynch.)

went into the car.

Q. What I had reference to, if they were sold to an independent broker would they normally be removed from your warehouse prior to the time of shipping? A. Not as a rule, no.

Q. Mr. Lynch, what was the practice of the Washington Fruit and Produce Company during the years that you were with them as to the handling of storage charges? How were they charged?

A. There was never a charge until the fruit was shipped, or whatever commodity we had in there for storage was removed from the warehouse, and it was charged up.

Q. Did you accrue storage month to month?

A. No. [91]

Q. For what reason?

A. Well, there are a number of reasons; because you never know what condition your fruit is in, or whether you have to make an allowance, maybe, for freezing or for excess deterioration on account of temperatures.

Q. Had that happened in years gone by?

A. Oh, yes, I've had that happen several times.

Q. When that happened would you collect your storage?

A. No, we wouldn't collect our storage, no. Matter of fact we've had to pay something in addition besides the storage.

Q. On April 29, 1944, did you have certain government meat and fats and things in storage?

A. We did.

Q. Were those according to the contract that

(Testimony of P. J. Lynch.)

Mr. Bloxom recognized this morning and testified to?       A. Yes.

The Court: I haven't examined that contract; how were the charges made in that contract, by the month?

A. Well, I just wouldn't know. The last time I looked at it was about five years ago.

The Court: This contract was on a basis of so much for the first month or fraction thereof, and so much for each subsequent month or fraction thereof.

Mr. Velikanje: That's right.

The Court: So that with that qualification it was [92] on a monthly basis.

Mr. Velikanje: Mr. Winter, I believe it was stipulated or admitted in your answer that the parties reported the dividend in kind on their own income tax return; there's no dispute on that, is there?

Mr. Winter: I don't think that it's material. I think that as a matter of fact they did.

Mr. Velikanje: Well, this is the one for Plath; I'd like to submit that in evidence. Was that a report that you made?

Mr. Winter: I think it may be understood, if the Court please, that all of the stockholders reported on their own individual income tax, consistent with their contention here, reported the dividend in kind, except Mr. Fred B. Plath, and he reported the dividend in kind to the extent only of cost to the corporation, whereas the others took it

(Testimony of P. J. Lynch.)

up as a dividend in kind at the fair market value at the date of the distribution, and some adjustments were made with respect thereto. I don't know if it's material, because it doesn't make any difference how they reported it. It may be understood, if it's material, except we object to it as being irrelevant and immaterial; it's self-serving.

Mr. Velikanje: We would like to offer in evidence the Treasury Department report on the re-audit of Mr. Plath. [93]

Mr. Winter: We object to it on the ground it's purely a revenue agent's report, and there is no evidence that it is a determination by the Commissioner. The Commissioner may or may not have followed it. I don't know that it's material.

Mr. Velikanje: I'll have this identified, your Honor.

Mr. Winter: Well, I'll admit that's the agent's report, and the agent is here.

Mr. Velikanje: I'll call the agent.

Mr. Winter: I'll admit that.

Mr. Velikanje: You may examine.

### Cross-Examination

By Mr. Winter:

Q. Mr. Lynch, what were you to get upon the dividend in kind, what were you to receive as a stockholder?      A. My share.

Q. What apples were you to receive?

A. What apples?

(Testimony of P. J. Lynch.)

Q. Yes. A. You mean identical apples?

Q. Yes. A. I wouldn't know.

Q. Could you have gone down in the basement and picked out your apples? A. No. [94]

Q. Could any of the stockholders have gone down there and picked out their apples?

A. Oh, I imagine they could have gone out and picked out lots if they wanted to.

Q. You mean they could have picked out all of the lots?

A. I don't know if they could do that.

Q. There was no attempt to segregate your apples from any of the other stockholders', was there? A. No.

Q. And whose idea was it to declare such a distribution?

A. Oh, I think it was a kind of a mutual understanding.

Q. With you, or was it Mr. Boyd?

A. I figured it would be a good thing, yes.

Q. Who told you about it?

A. Oh, I just don't remember; it might have been our bookkeeper or auditor, I don't know, but as soon as it was explained to me I thought it was a good thing for me.

Q. What advantage did you think that you were going to get from handling it that way?

A. Oh, I didn't think I'd go so high in the bracket; I might save a little income tax.

(Testimony of P. J. Lynch.)

Q. Well, then, the sole purpose was to save income tax, wasn't it?

A. Well, I imagine all the deductions are for that same purpose. [95]

Q. Well, was this or was it not for the sole purpose of saving income tax?

A. I don't see what other interest I'd have.

Q. Well, that was the sole purpose, then, is that what you mean?      A. I guess so.

Q. Well, then, the corporation could have well sold the apples and distributed the profits to you, couldn't they, as a stockholder?

A. How do you mean?

Q. I mean the corporation could have sold the apples and distributed to you the profits?

A. Without——

Q. Without going through this signing this contract and this procedure you went through?

A. Well, I don't see what you're trying to get at, because——

Q. I didn't ask you to see what I'm trying to get at; just answer my question. Could the corporation have sold them?

A. I told you we went into that in order to save going into the high bracket income; if they sold in the ordinary way we wouldn't have done that.

Q. Well, then, your sole purpose was to save income tax?      A. Why, sure.

Q. It was intended by you and the other stockholders that the corporation was going to sell them

(Testimony of P. J. Lynch.)

as usual, doing the packing, [96] doing the storing, and doing the shipping, wasn't it?

Mr. Velikanje: What was that question?

A. I don't understand that.

Q. All right, I'll strike it. It was the understanding between you as a stockholder and you as an officer of the corporation that the corporation was to store the apples, pack the apples, ship the apples, and pay you the profits?

A. Yes, we had a conference——

Mr. Velikanje: Your Honor, I think there's a written contract that is binding.

A. There's a contract on that, isn't there?

Mr. Winter: This is cross-examination.

The Court: Well, I'll overrule the objection. It's shown in the contract, I presume, that they did.

Q. (By Mr. Winter): There was no sales problem; in other words, all the apples were sold that you wanted to deliver, weren't they?

A. Yes.

Q. And you knew that before you entered into this arrangement?

A. Well, I wouldn't say exactly that. I don't think we made all that, I think the arrangements were we set these apples down, and decided afterward, or we may have decided at the time, but the results have shown that we did do it eventually; what time it was decided on that I don't know, just the hour or [97] day.

Q. I think you said that you couldn't tell from

(Testimony of P. J. Lynch.)

month to month as to what storage had accrued, is that right?      A. No, I didn't say that.

Q. Well, could you tell from month to month the amount of the accrual of storage on your stuff you had down there?

A. Oh, I suppose if I took the chance to check it up I could have, but I didn't do it.

Q. Well, I think in answer to a question of counsel you said that was one of the reasons why you didn't accrue the storage on these apples, because you couldn't tell how much loss you were going to have.

A. I mean that's why we didn't accrue it each month.

Q. Well, then, on April 29 you couldn't accrue it then, could you?

A. We couldn't accrue it?

Q. Yes, you couldn't determine the accrual?

A. You could determine the accrual, but you couldn't collect it.

Q. You could determine the accrual but you couldn't collect it, is that what you mean?

A. If you had a thousand boxes in storage for five months anybody can tell how much the storage amounted to.

Q. Yes, you bet you, and you could have accrued it on your books that way, couldn't you? [98]

A. If we thought there wouldn't be any loss or kick-back, yes, it would have been all right.

Q. Well, on April 29, 1944, you accrued all the

(Testimony of P. J. Lynch.)

storage that was due on your corporation books, didn't you?

A. I don't know, I didn't take care of the books.

Q. Well, do you know anything about what they accrued on their books, then?

A. No, principally my work was to examine fruit and buy fruit in the field; I didn't have a thing to do with the books; I'm not a book man.

Q. Well, then, you don't know then whether it was proper to accrue it or not, do you?

A. Well, I know we didn't; I don't know whether it was proper or not.

Mr. Velikanje: Mr. Lynch, the corporation never accrued storage, did they?

Mr. Winter: Well, he said he didn't know.

Mr. Velikanje: Isn't that correct, they never did?

A. No, they never accrued month to month.

### Redirect Examination

By Mr. Velikanje:

Q. Now, in answer to Mr. Winter's question you said you knew or could figure out what the storage would amount to. Would you know what it amounted to if some of your ammonia pipes broke or some of your fruit spoiled?

A. No; we'd know what the storage amounted to, but we wouldn't [99] know how much we'd have to pay in damages.

(Testimony of P. J. Lynch.)

Q. And if there was a failure you wouldn't collect your storage, would you?

Mr. Winter: We'll object to it as argumentative and suggestive.

The Court: It's repetition, I think.

Q. (By Mr. Velikanje): Mr. Lynch, is it customary on Produce Row and also in the Washington Fruit for various customers to pool their fruit in fruit pools for sale?

A. Sometimes, yes.

Q. Is that quite a common custom?

A. Well, it is more common in other houses than ours.

Mr. Velikanje: That's all.

Mr. Winter: That's all.

### Examination

By the Court:

Q. You said, Mr. Lynch, or I understood you to say that the purpose of making this dividend distribution of apples was to save income tax. Did you mean of the stockholders, or the corporation?

A. Of the stockholders.

Q. You thought you would save income tax for the stockholders?      A. Yes.

Q. You didn't have a great deal of loss in storage, did you, from damage to fruit? [100]

A. Oh, no. Sometimes we did. It was never very serious; we never had a very serious ammonia leak.

Q. This corporation had been very profitable, had it not?      A. Yes.

(Testimony of P. J. Lynch.)

Q. What was the amount of the capital stock of the corporation?

A. Ten thousand dollars.

Q. It paid as much as 500 per cent dividends at times, didn't it?      A. I guess it did, yes.

Q. And as late as 1937 you declared a dividend of \$62,500 on a \$10,000 capitalization?

A. Yes.

Q. That made your excess profits tax very high, did it not?      A. Yes.

Q. The trustees knew that, did they not?

A. Yes.

The Court: Any other questions?

(Whereupon, the witness was excused.)

### WALTER W. SCHOPPE

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Velikanje:

Q. Your name is Walter Schoppe?

A. That's right.

(Whereupon, Revenue Agent's Report was marked Plaintiff's Exhibit No. [101] 7 for identification.)

Q. Mr. Schoppe, I hand you Plaintiff's identification 7; do you recognize that?

A. It appears to be a revenue agent's report.

(Testimony of Walter W. Schoppe.)

The Court: I didn't get the answer.

A. It appears to be a revenue agent's report.

Q. Out of what district or area?

A. The Seattle Division.

The Court: What number is that?

Q. 7. In 1945 and 1944 you were employed out of that district? A. Right.

Q. What is your business?

A. Internal Revenue Agent.

Q. Mr. Schoppe, would you examine identification 7 further and advise if you had anything to do with the preparation of that instrument?

Mr. Winter: Counsel, I've advised you that that is the report which was furnished to the taxpayer by the revenue agent in charge. We'll admit that it's his report.

Mr. Velikanje: You objected to it going in before, Mr. Winter.

Mr. Winter: Yes, and I still object to it, but I'm not objecting to the proper identity of it. [102]

The Court: You deny the materiality?

Mr. Winter: I deny that it's binding, nor is it a material exhibit, nor is it proper, because there's no showing that the Commissioner followed it.

The Court: All right, there seems to be no doubt about the identification. You're not questioning the identification of this document?

Mr. Winter: Oh, no; just the materiality.

The Court: If you wish to offer it.

Mr. Velikanje: Yes, I'd like to offer this.

(Testimony of Walter W. Schoppe.)

The Court: Then I'll hear you on the admissibility of it. I'm not sure yet I know what it is.

Mr. Velikanje: Well, I think I'd better ask a couple more questions on it.

Q. (By Mr. Velikanje): You audited the books of the Washington Fruit and Produce Company after the corporation's dissolution?

A. I examined the books and records.

Q. And rendered your report then to the Internal Revenue Agent of the Internal Revenue Department?

A. Internal Revenue Agent in charge.

Q. In charge in Seattle? A. Yes.

Q. And this identification 7 is part of your report?

Mr. Winter: Isn't that Mr. Plath individually?

Mr. Velikanje: This is to Mr. Plath individually. [103]

Mr. Winter: That doesn't have anything to do with the corporation.

Q. (By Mr. Velikanje): But as a result of your examination this report was rendered to Mr. Plath?

A. Well, as a result of Mr. Plath's return, probably.

Q. And your examination of the——

A. They were probably made coincidentally or concurrently.

Q. They were made coincidentally?

A. Yes.

Q. Now, Mr. Schoppe, on page 3 under subsec-

(Testimony of Walter W. Schoppe.)

tion B is a reference to dividend in kind. Is that correct?      A. Right.

Q. Did you as an agent of the Department recognize this dividend in kind?

Mr. Winter: Just what do you mean; do you mean as to whether or not the corporation recognized it as a dividend in kind?

The Court: He's asking whether he as an agent recognized it.

Mr. Winter: We'll object to it as irrelevant and immaterial, can't be binding on the United States.

The Court: Is it your contention that the government would be bound by the view this agent might take?

Mr. Velikanje: Yes, unless they have come back with any other contention. None has been shown in this [104] case.

The Court: As I understand it, this pertains to the individual return of one of the Plaths, doesn't it?

Mr. Velikanje: That's right, and it's one of the cases we're trying here, but I just desire to show and I have shown from the examination here that he examined the books of the corporation, coincidentally examined the return of Fred B. Plath on the basis of the examination of the return of the corporation, and this is his report as an agent of the United States Government rendered to the Internal Revenue Agent in Charge.

The Court: Was it adopted by the Commissioner, or is there any evidence of that?

(Testimony of Walter W. Schoppe.)

The Witness: The report has been accepted by the Internal Revenue Agent in Charge, and that's usually acceptance.

Mr. Winter: Not the Commissioner, if the Court please.

Mr. Velikanje: Well, I believe this man can testify.

The Court: I probably confused him. What he's talking about is the agent in charge at Tacoma, Washington, Mr. Squire, now, isn't it, and not the Commissioner of Internal Revenue. That's what you meant?      A. I believe so.

The Court: Yes; go ahead. [105]

Q. (By Mr. Velikanje): But this has been accepted by the Internal Revenue Agent in Charge?

A. Right.

Q. And do you know of any rejection by the Commissioner of your report?

A. No, I do not—of this report?

Q. Yes.      A. No, I do not.

Q. So far as you know it has been accepted?

A. Right.

Mr. Velikanje: Now, your Honor, we offer this in evidence.

Mr. Winter: May I ask you one question?

#### Voir Dire Examination

By Mr. Winter:

Q. Do you know whether or not the Commissioner has made any additional assessment or au-

(Testimony of Walter W. Schoppe.)

thorized any refund against Mr. Plath for that particular year? In other words, do you know what the status of his income tax is for that year?

A. Presently I believe that report has been accepted; however, because of the dissolution of the corporation there would of course be that difference between the cost of the stock and the fair market value of the assets, which would be taken up as income at the time of dissolution. Now, because of the fact——

Mr. Velikanje: Just a moment. I can't [106] quite figure what you're basing this dissertation on.

A. Well, you asked me whether or not——

Mr. Velikanje: No, I didn't ask you.

A. Excuse me.

The Court: Mr. Winter, I think, asked the question.

Mr. Velikanje: Would you read back Mr. Winter's question?

(Voir dire question by Mr. Winter read by reporter.)

Mr. Velikanje: Now, I think, your Honor, that can——

A. I was trying to explain that answer, and there has to be an explanation.

Mr. Velikanje: I don't think that's responsive; I move it be stricken.

The Court: Yes, it's not responsive. It will be stricken. I think the question is whether you of your own knowledge do or do not know what action

(Testimony of Walter W. Schoppe.)

has been taken by the Commissioner on this report of yours. We're not talking about what somebody told you or what you learned around the office drinking fountain, but do you actually know of your own knowledge what action the Commissioner has taken?

The Witness: Presently of course I think the report has been accepted, but I also say the matter of the income tax on the corporation, which would affect the liability of the individual, I think would keep that return open. [107]

Mr. Velikanje: Well, your Honor—

Mr. Winter: Now he's saying this is still open, that's what he's trying to tell you.

Mr. Velikanje: No, you're trying to tell me that. Mr. Schoppe says he thinks it might be, but he hasn't given any basis of his securing any of this knowledge.

The Court: Isn't there any way this can be definitely ascertained without asking an agent what action the Commissioner has taken in a matter of this kind?

Mr. Velikanje: If there is I don't know.

Mr. Winter: The matter is open unless the Commissioner has issued a letter, and they should have that letter. That's a fact. I'm not trying to limit you. I don't think it makes any material difference whether we've accepted that return. Until this matter is settled we don't know whether that's correct or not. That's what we're here in Court for.

(Testimony of Walter W. Schoppe.)

Mr. Velikanje: No, that's not what we're here in court for.

The Court: I'll admit it in evidence. I can't try the whole lawsuit every time somebody offers an exhibit.

(Whereupon, Plaintiff's Exhibit No. 7 for identification was admitted in evidence.)

Mr. Velikanje: That's all. [108]

Mr. Winter: That's all.

(Whereupon, the witness was excused.)

WINFIELD G. BOYD

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Velikanje:

Q. Your name is Winfield Boyd? A. Yes.

Q. Are you the same Mr. Boyd that Mr. Winter has been referring to as going around advising all these people how to save taxes? A. I am.

Mr. Winter: Well, I'll give you eight cases he's done this in if you want, counsel.

Q. Mr. Boyd, what is your business?

A. I'm a certified public accountant.

Q. With what office?

A. Boyd-Olofson Company.

Q. How long have you been a certified public accountant? A. Since 1926.

Q. How long have you been in private business?

(Testimony of Winfield G. Boyd.)

A. Since 1937.

Q. What did you do prior to that time?

A. I was a revenue agent.

Q. In what district?

A. In the Seattle Division. [109]

Q. Mr. Boyd, are you familiar with the operations of the Washington Fruit and Produce Company as a corporation?

A. I was familiar with the operations of the Washington Fruit and Produce Company from about 1924 to probably 1937. I should modify that to say that I went back and examined their returns from I guess 1917 on, in the year 1924.

Q. That's while you were——

A. While I was a revenue agent, yes.

Q. While you were with the Revenue Department?

A. Yes. After that I had nothing to do with it until I guess about January 1, 1944.

Q. At the time that you became familiar with them again in 1944 did you go back and check over books and records of the corporation and familiarize yourself with the company?

A. I went back over all the records I could find. I found some of them at the time, and some of them I didn't find until, or didn't get hold of until about a year ago, and there was still another file that I first saw last Saturday, but I tried to familiarize myself with the records.

Q. Are you familiar with the Washington Fruit

(Testimony of Winfield G. Boyd.)

and Produce Company as a corporation, their method of handling storage charges?

A. They handled storage charges the same as most others on the Row, that is, they charged for storage and made the entry when the fruit went out, or probably even when the money came [110] back from the sale of the fruit that went out.

Q. Did they accrue any storage on any of their operations monthly?           A. No.

Q. Or over any other definite decided period?

A. Not to my knowledge; I didn't find any such record.

Q. Were you representing the company on their dissolution April 29, 1944?

A. I was representing them as accountant.

Q. Did you prepare their income tax return?

A. For the closing?

Q. Yes.           A. Yes.

Q. I hand you Exhibit 7. Do you know the reason that there was an adjusted matter as to the dividend in kind stated in that return? You also prepared Mr. Fred Plath's return, did you not?

A. Yes, I did. The reason for the adjustment was purely and simply—

Mr. Winter: Now, we'll object to it, as the document speaks for itself.

The Court: What's he referring to?

Mr. Winter: He's referring to an agent's report, and he's trying to construe the agent's report as to what it says. That speaks for itself. [111]

(Testimony of Winfield G. Boyd.)

Mr. Velikanje: No, my question was why was it necessary to make a change, I mean why a correction in the return.

Mr. Winter: Are we going to try Mr. Plath's income tax liability for 1944?

Mr. Velikanje: No.

Mr. Winter: We'll object to it as irrelevant and immaterial, as to how he may have reported it.

The Court: What bearing does it have?

Mr. Velikanje: It has no bearing other than this, as an explanation, your Honor; I believe Mr. Boyd's testimony will be that this was an error of his office in using a wrong basis on Mr. Plath's, and is the only one they did make that error in.

Mr. Winter: Even so, what difference does that make?

The Court: I think he should be permitted to make the explanation. The point has been made that in his case he entered only the cost of the apples to the corporation.

Mr. Velikanje: That's right.

The Court: And I got the inference at any rate that that was being relied upon to some extent by the government to show it wasn't a bona fide transaction.

Mr. Winter: No, I'm not relying on that that it [112] wasn't a bona fide transaction, the error that was made here.

The Court: In cross-examination, Mr. Winter, you went into the question and elicited from the witness, I believe it was Mr.—

(Testimony of Winfield G. Boyd.)

Mr. Velikanje: I think it was Mr. Bloxom.

The Court: —Bloxom, I thought, at any rate, Mr. Winter brought out that in the case of one of these stockholders he didn't even enter the profits on his income tax return, he put it in merely as the basis of the cost to the corporation.

Mr. Winter: No, your Honor, all I said was, counsel asked us to admit that they had all reported the amount of the dividend income on their individual returns, and I said that was absolutely true except Mr. Plath, and he returned it as the cost, and it was later adjusted by the Bureau, and if it was in fact a dividend it would be a proper report, and I said if admissible I would admit those facts, and that's all I've gone into.

The Court: Is it stipulated, then, that all of the stockholders made a return on their individual return showing the profit that was realized from the sale of this fruit except Mr. Plath, and that in Mr. Plath's case it was due to an accounting error of his accountant that it wasn't returned on his return? Is that conceded? [113]

Mr. Velikanje: That's right.

Mr. Winter: I don't concede that it was——

The Court: All right, proceed with the examination. I'll overrule the objection; exception allowed.

The Witness: Well, your Honor, there were three groups of stockholders, and I believe we made the returns for all groups. On Mr. Lynch's return I had the correct amount down and we had the correct amount to report in our office. The techni-

(Testimony of Winfield G. Boyd.)

cality of making out the returns after they brought in the estimates have been rather bad, because people come in and want an estimate made out, and they slam down some figures for the estimate, and then the final return comes up and we may pick the wrong figure, and in the Plath case I picked the wrong figure and the amount was understated on the return, and it was my fault, and the examining agent adjusted it, and we agreed to the adjustment, and so far as I know, and I believe I know correctly, the case was settled.

The Court: Proceed with your examination, Mr. Velikanje.

Q. Mr. Boyd, are you familiar with the customs and practices of Produce Row as to the handling of storage accounts, storage charges? A. Yes.

Q. What is the custom and practice of Produce Row?

The Court: The record may show an objection on [114] this line of testimony, by government counsel, and overruled. Proceed.

A. The custom in the Row is not to take up storage until such time as the merchandise has left the warehouse.

Q. Are you familiar with the reason behind that?

A. The reason behind it is two-fold. In the first place, it would be hard to collect prior to that time, and in the second place the feeling is that the full contract is not consummated until the merchandise

(Testimony of Winfield G. Boyd.)

is delivered in good condition, and if it isn't delivered in good condition it's impossible to collect.

Mr. Velikanje: You may inquire.

### Cross-Examination

By Mr. Winter:

Q. Do most of these companies on Produce Row file on a fiscal year basis, Mr. Boyd?

A. They file on various dates. There are a few that file on December 31, some on April 30, some on May 31, some on June 30.

Q. Now, Mr. Boyd, you know as a matter of fact, do you not, as a revenue agent, that most of them have a fiscal year ending after the fruit that has been in storage has left the warehouse, do you not? Now, just state to the Court whether or not that's a fact.

A. The majority of the warehouses have a fiscal year that probably ends so that in the ordinary year the vast majority, or a very considerable majority of the fruit would be out.

Q. Yes, and then it doesn't make any difference whether they [115] were on a cash receipts and disbursements or the accrual so far as the receipts for that particular year is concerned, does it?

A. If all the fruit——

Q. Actually?

A. If the fruit were entirely out it wouldn't make any difference.

Q. And in the cases where a small portion was carried over actually it wouldn't make, tax-wise,

(Testimony of Winfield G. Boyd.)

much difference from year to year as long as there wasn't liquidation, is that right?

A. The smaller the amount of fruit on hand the less the quantity of the error would be.

Q. As a matter of fact, as of June 30, 1944, the practice and the custom and the actual fact in this area, most of the apples if not all have left the warehouses by that time, otherwise they're taken to the dump, isn't that right?

A. June 30, 1944, that might be true, because it was a short crop year.

Q. Well, let's take the average year, wouldn't that be true?           A. No.

Q. You mean to tell this Court that not most of the fruit has left the warehouse by June 30 each fiscal year?

A. I was receiver for a company myself that had a lot of fruit on hand on June 30.

Q. Is that the reason why it was in receivership? [116]           A. No.

The Court: What varieties are on hand usually on June 30?

A. Usually Winesaps. In the case that I'm speaking of, Judge, it was Delicious, and it had reached the point where it was rather precarious.

The Court: Is there ordinarily a Delicious market in July?

A. I believe that if you had Delicious in good condition that you could sell Delicious apples at any time.

(Testimony of Winfield G. Boyd.)

The Court: Is there any appreciable amount of Delicious on hand in July?

A. Not an appreciable amount of Delicious, your Honor. In the particular case I speak of it was seven cars.

Q. (By Mr. Winter): When does the fresh fruit commence around this area, do you know? Cherries?

A. The fruit would really start coming in about September 10, I would say.

Q. You're talking about apples. I'm talking about small fruit, like cherries and soft fruits.

A. The cherries are considered a crop that may come in June, because the warehouses that handle lots of cherries like to have a May 31 closing.

Q. Now, Mr. Boyd, referring to your exhibit 5, will you just state to the Court what amount you accrued as storage accruals [117] as of April 29, 1944?

A. Your Honor, I didn't accrue anything.

Q. Just answer my question, Mr. Boyd.

(Pending question read by the reporter.)

The Court: If you didn't accrue anything you may say so.

A. I accrued nothing.

Q. For liquidation purposes?

A. For liquidation purposes I placed a value of \$37,225.96 on the storage accounts.

Q. Just read that account, the way the account is written there on the books—on the return.

(Testimony of Winfield G. Boyd.)

A. It's headed "Constructive balance sheet showing fair value of assets as of April 29."

Q. 1944? A. Well, it would be 1944.

Q. All right, what does the item which I—

A. And under "Storage accounts" \$37,225.96.

Q. All right. What do those storage accounts refer to?

A. Those storage accounts refer to a fair value placed upon the—that could be computed as of April 29 against the merchandise in the house, provided you computed it.

Q. Well, would that be computed upon the storage which had accrued under the contract with the government, and with all the growers? [118]

A. That's computed upon the contracts that you have on the particular merchandise in the house.

Q. Upon the monthly rentals or storage charges, isn't it?

A. Well, it would be computed according to the contract.

Q. Well, is it computed on the monthly storage charges? A. I didn't make the computation.

Q. Well, you know whether it is or is not computed from that. Is it, or is it not?

A. I take it that it is computed by taking the various contracts you had in hand, applying them against the merchandise in the house.

Q. Applying them against what merchandise in the house, the value of the merchandise, or the storage charges?

(Testimony of Winfield G. Boyd.)

A. If you had a hundred tons of lard for a certain length of time, you had a contract on it.

The Court: Is this true, Mr. Boyd; what those figures represent, isn't it, is the amount of storage that would be due the corporation if it were collected on that day, all of it?

A. I think that's correct.

Q. You think? Don't you know?

A. I said I didn't make the computation.

The Court: Well, I was just trying to help out.

A. It is my understanding that this computation was made on the basis as to what they would have collected if on that date [119] all the merchandise had gone out and they had charged it.

Q. Does the return anywhere else, I mean is there taken up in income on the return any portion of those storage charges as reflected in income?

A. No portion of the storage charge was reflected in income.

Q. In other words, no part of the storage income which had been earned prior to that date was taken up as income on the return for 1944?

A. That is correct.

Q. But yet when you liquidate you accrue all of that storage charge for the purpose of liquidation, is that right?

A. The return as filed was filed according to the basis of accounting followed by the corporation. Liquidation comes under another section of law, and we gave what we considered to be the fair value of all assets at that time.

(Testimony of Winfield G. Boyd.)

Mr. Winter: Mr. Reporter, that's not responsive. Please read that question back.

Mr. Velikanje: I think it's responsive.

The Court: Well, I'll determine that. Read the question.

(Last previous question read by the reporter.)

The Court: Can you answer that yes or no?

A. Well, we accrued no storage charge whatever. I answered that in the first place.

The Court: I think there may be some difficulty in [120] the use of terms here. I'm neither an accountant or a tax expert, but I'm trying to find out what you're talking about here.

A. Your Honor, I could explain it.

The Court: Proceed.

Q. (By Mr. Winter): Well, on April 29, 1944, how much was due the corporation for storage for merchandise in that plant up to that date? Can you tell us, as an accountant?

The Court: Well, I think that will probably get the same response we had before when you used the word "due." They take the position it isn't due.

Q. Let's use the word earned.

A. If your fruit went out, if the merchandise in the house went out on April 29 and you collected under the scheduled prices, there would have been thirty seven thousand some odd dollars come in at that time.

Q. Was any part of that thirty seven thousand,

(Testimony of Winfield G. Boyd.)

is any part of that thirty seven thousand dollars reflected in the income tax return as profit or loss?

A. No part of that thirty seven thousand was in the income tax return for that year.

Q. Has any part of that thirty seven thousand been reported in the individual income tax returns as income?      A. Yes.

Q. As distinguished from capital gain? As ordinary income? [121] You understand what I mean, Mr. Boyd?

A. The thirty seven thousand dollars, by virtue of being included as an asset on the liquidation date, comes across to the individuals as capital gain.

Q. Yes. Was any part of it reported as ordinary income earned by the corporation or by the individuals? That's what I want to know.

A. Well, it wasn't reported by the corporation, and it was reported as capital gain by the individuals.

Q. Well, then, the answer is no, then, isn't it? Is that what you mean? Is the answer to my question "no"?

A. I believe the answer to your question would be no.

Q. Yes. That's all. Wait a minute. All the expenses in connection with the storage, running the plant, and everything, were taken as an expense on the return, up to date, weren't they?

A. All expenses of labor, and power, depreciation——

Q. Including vacation pay that accrued?

(Testimony of Winfield G. Boyd.)

A. —and vacation pay that accrued would be in as expense.

Q. I'll show you what has been marked for identification defendant's Exhibit 6. Do you recognize that as a statement coming from your office that you submitted in connection with the investigation of the corporation's tax liability for that year?

A. Frankly I don't recognize this as coming from our office. [122]

Q. Well, look at the return.

A. Undoubtedly this was worked up, and probably is from our office.

Q. Well, I'll ask you whether or not the return shows an accrual and takes a deduction for the accrual of pay in accordance with that schedule? I realize your name is not signed to it, Mr. Boyd. I haven't seen the books, so I didn't make it.

A. Well, it would have to be included under accrued expenses, I imagine it was, and frankly—

Q. Under included expenses of how much?

A. —and frankly I think this was in as expense.

Q. Well, did you accrue that amount in the return as an expense, pay earned but not paid, vacation pay?

A. It would have to appear as accrued expense.

Q. Under what schedule?

A. In the balance sheet.

Q. Under the balance sheet. Just read the item where it would be included.

(Testimony of Winfield G. Boyd.)

A. There is no such figure here; I think it's in an amount of \$6,768.80.

Q. What is the heading?

A. This figure is \$1,192.60. I think it belongs in there, but I can't make the definite statement at this time.

Q. Is Mr. Olofson here? Well, as a matter of fact you know [123] as a matter of fact that they did accrue vacation pay, and it's reflected in the return, and took a deduction for it?

A. I think they accrued vacation pay.

Q. And what other accruals did they accrue with respect to bonuses, as shown by the return? Would you read that to the Court? You're reading from the return, now, Exhibit 5.

A. We have an item of deferred profits and accrued expenses, and on 6/30/43 that amount was \$5,891.06, and on 4/29/44 it was \$6,768.80, and that is about all this——

Q. Well, just read that note that's there on your return, Mr. Boyd.

A. Well, find me the note. O. K.

Q. Under explanation of items of income and expense. A. All right.

Q. On your income tax return, Exhibit 5. Will you read to the Court what you say there?

A. Under "compensation of officers" I make this statement: "Above includes 15 per cent bonus accrued and applied for to Salary Stabilization Unit, bonus to be paid only after permission is secured."

(Testimony of Winfield G. Boyd.)

Q. At that time you didn't even have permission to accrue it, but you accrued it, didn't you?

A. That was an item you couldn't pay until you got permission.

Q. Well, as I say, you did accrue it, although you didn't [124] have permission, you couldn't pay it, didn't you? A. It must have been accrued.

Q. Well, you kept your books on the accrual basis of accounting, didn't you, Mr. Boyd, and so reported in your income tax return?

A. No, I think the books were kept——

Q. What—all right.

A. ——on the basis of accruing certain items; other items were handled on the deferred charge basis.

Q. Deferred charge, or do you call it more or less of a completed contract basis?

A. Well, the ranch operation, for instance, was handled in an entirely different way.

Q. Well, that was a separate operation?

A. Well, it was part of the Washington Fruit and Produce Company operation.

Q. Just refer to the return and tell us what that says in answer to the question upon what basis was the corporation's return made.

A. Item 10 of the questions states this: "Is this return made on the basis of cash receipts and disbursements?" Answer "No." "If not, describe fully in separate statement." "Taxes and similar expenses have been accrued as in past."

Q. "As in past"? A. "As in past." [125]

(Testimony of Winfield G. Boyd.)

Mr. Winter: I think that's all. We'll offer in evidence the statement, unless counsel has some objection to it, Exhibit 6.

Mr. Velikanje: I don't believe that's been properly identified, your Honor.

Mr. Winter: Well, I just wanted to relieve you from bringing in the books and records here. We can take it out from the books and records that was furnished from your office. I can put a witness on to have him testify. I don't know why you're so afraid of it if it's not true.

The Court: I'll sustain the objection as not properly identified at this time. The witness said, as I recall, that he couldn't positively identify it. Any other questions?

### Redirect Examination

By Mr. Velikanje:

Q. Mr. Boyd, I believe you testified to that, how was the ranch handled for accounting purposes?

A. The books of the ranch would be closed at the end of the calendar year, that is, on December 31; they would make up the profit and loss of the ranch, and then all expenditures of the ranch from that time on would be capitalized, that is, labor, spray, fertilizer, pruning, and all; well, they would carry on then until that year's crop was taken off.

Q. Then that would not be reported in the tax year ending June 30? [126]

A. On June 30 every year there was an account in the books called "deferred ranch expense" and

(Testimony of Winfield G. Boyd.)

that would run up to about \$4,000.00. It was treated as an asset, but they didn't inventory any growing crop, they didn't try to estimate the value of the crop, they just let it ride as a deferred charge. In other words, it was handled differently than the straight accruals, and it's just a different method of accounting for that particular branch of the business.

Q. You started to state before Mr. Winter interrupted you as to the two different methods necessary, one to accounting of the corporation, the other as to accounting in liquidation. Could you explain that at this time?

A. Well, I think that explanation is the whole basis of this case. As we understand it, any going corporation in its year of liquidation files its return on the same basis that it would file if it were continuing in business, that is, you don't revalue any assets, you don't—

Mr. Winter: Oh, if the Court please, this is merely argumentative and giving his own conclusion on the matter. We'll object to the answer as not proper redirect examination.

Mr. Velikanje: I think, your Honor, he can testify as an expert.

The Court: Well, he's an expert accountant. I'll overrule the objection. [127]

A. So that on a going concern you would close the books just as though you were following your old system. Now, the section of law relating to

(Testimony of Winfield G. Boyd.)

liquidations, it is mandatory to show the fair value that the stockholders get in liquidation. They may have a building that's worth three times what the books show; you have to value that, and we did value those buildings; we charged the value of the buildings, the equipment, the ranch, and we also charged in these accounts, that is, we valued accounts at that time because we had to, and the reason for putting the accounts in on the liquidation was that we had to show them at that time, because it was mandatory that we come in with a fair valuation.

The Court: Well, regardless of any requirement of law it's a matter of accounting, if you were making an assets and liabilities statement of a corporation you'd have to put in earned storage charges, wouldn't you, Mr. Boyd? If you represented a client who wanted to borrow from a bank would you leave out \$37,000 of earned storage charges as part of the assets, when you were making up the statement to the bank as to its worth?

A. There would be two ways of handling it; you could put in the constructive balance sheet, which we did here.

The Court: You're getting a little deep for me; what is a constructive balance sheet?

A. A constructive balance sheet is a balance sheet that is [128] not necessarily for the books.

The Court: I'm very ignorant on accounting, but if a corporation wanted to borrow from a bank

(Testimony of Winfield G. Boyd.)

they'd have to make a statement showing their assets and liabilities, wouldn't they?

A. And ordinarily you'd make a constructive balance sheet.

The Court: You didn't answer my question. Wouldn't they ordinarily make out a statement of assets and liabilities?

A. A statement of assets and liabilities would be a constructive balance sheet.

The Court: You mean to say that wouldn't reflect \$37,000 of earned storage charges?

A. It would, and I have shown it in this one referred to here. It is shown, and it does show the storage.

The Court: I don't want to take too much part in the examination here. It just occurred to me, though, that it wasn't altogether on account of a legal requirement you'd make up this kind of a statement. Whatever you call it, if you wished to reflect the assets and liabilities of this corporation correctly on April 29 you'd have to show their earned storage charges?

A. That is correct, and you do it by a constructive balance sheet.

The Court: I'm not concerned with how you show it; [129] go ahead with your examination.

Mr. Velikanje: That's all.

Mr. Winter: That's all.

(Whereupon, the witness was excused.)

Mr. Velikanje: We rest.

(Short recess.)

Mr. Velikanje: I was wondering if I might reopen to make one statement. I wonder if it is clear to you, I have attempted to bring it out, that this government storage moved in and out, this was not one bulk storage that stayed a long period of time, but Mr. Bloxom testified this morning it would come in and stay for just a few months, and move out again, and that they made their charges as it moved out. I wanted to be sure that was clear.

The Court: I'm not sure whether the record shows that or not. I think he did testify it was of short duration, usually wasn't in more than two or three months, and I don't recall clearly the moving in and out part of it. You may recall him if you wish.

**JOHN M. BLOXOM**

a witness for the plaintiff, was recalled and testified further as follows:

**Direct Examination**

By Mr. Velikanje:

Q. Mr. Bloxom, how long would this government storage be in your warehouse? [130]

A. Anywhere from one month to six months. It was customarily coming in and going out throughout the war.

Q. And what was your practice as it moved out?

A. To charge storage to the government after

(Testimony of John M. Bloxom.)

each car had been shipped, but charge them nothing before each car had been shipped.

Q. In other words, as storage would move out piecemeal, you would charge the storage on that that moved out?

A. On each car. We were charging storage to the government right up to the time we disincorporated, every day.

Mr. Velikanje: That's all.

#### Cross-Examination

By Mr. Winter:

Q. After you disincorporated did you continue to store for the government there? A. Yes.

Q. Did you get a new contract with the government? A. I don't recall.

Mr. Velikanje: We have it here if you desire it.

A. But I do remember that our storage deal with the government all during the war was on the same terms.

Q. When you cancelled that contract as of April 29, or when you liquidated, did you accrue as income any part of the storage that had been earned prior to that time from the government and not charged?

A. We accrued everything that was earned. We felt we hadn't [131] earned it until after each car was shipped.

Q. Then if you had a dozen cars there on April 29, 1944, when you liquidated, and they hadn't come

(Testimony of John M. Bloxom.)

out, you didn't report that as income for the year 1944, is that right?

A. We felt we had not earned it.

Q. Although the merchandise had been there under your agreement for four months, you didn't include that on your returns?

A. No, I think that was testified to before.

The Court: The witness nodded his head. You have to answer by voice.

A. Sorry. Everything we loaded out on April 29, we charged storage on.

The Court: I think that's clear.

Mr. Winter: I think it's clear now.

Mr. Velikanje: That's all, Mr. Bloxom.

(Whereupon, the witness was excused.)

Mr. Velikanje: Do you wish to see this other instrument?

The Court: I might say in my interrogation of Mr. Boyd here I wasn't taking any position in this matter at all; I was trying to bring out that as I get it, it's the contention of the taxpayer here that there was one basis of computation or consideration of these storage charges for the purpose of a liquidation statement of assets and liabilities, and another for the purpose of income tax [132] return. That is your position, isn't it?

Mr. Boyd: Yes, sir.

The Court: I think Mr. Velikanje should answer as to the position. I don't know whether you heard me or not.

Mr. Velikanje: No, not necessarily.

The Court: Well, all right.

Mr. Velikanje: We rest, your Honor.

WALTER W. SCHOPPE

recalled as a witness on behalf of the defendant, resumed the stand and testified as follows:

Direct Examination

By Mr. Winter:

Q. Your name is Walter W. Schoppe?

A. Walter W. Schoppe.

Q. And you were a witness who was called to testify for the plaintiffs in this action this morning?

A. Right.

Q. As I understand, you were a revenue agent assigned to investigate the tax liability of the plaintiff corporation for the taxable year ended April 29, 1944?

A. For the taxable period ended 4/29/44, right.

Q. In connection with that investigation did you have occasion to check the accruals as appearing on the books of the corporation? A. I did.

Q. And I show you what has been marked for identification defendant's Exhibit 6. I'll ask you to state if you know what [133] that is and where it came from?

A. It is the computation, it's titled "Computations of vacations payable, Washington Fruit and Storage Company" and I believe I received it from Mr. Boyd's office, and it shows ten-twelfths of a

(Testimony of Walter W. Schoppe.)

year of vacations payable, in the total sum of \$993.83.

The Court: That's enough; it's identified.

Q. How did you come to request or get that exhibit?

A. There was an accrual account on the liability side of the ledger, and in checking out that account I found the vacations payable, and I questioned the item originally, and then this exhibit——

Q. Who did you take the matter up with, the taxpayer's accountant, Mr. Boyd?

A. Mr. Boyd was representing the taxpayer before the Treasury, or before the Bureau of Internal Revenue at that time.

Q. And in connection with that he furnished you that statement, is that right?

A. Yes, and he told me that this was the way it was computed.

Q. I'll ask you, Mr. Schoppe, in your examination of the books and records, whether or not all accounts of the corporation were either accrued, or how they were handled on the books?

A. Well, insofar as I know all the accounts, all the payables, [134] were accrued, but the income was not accrued. All the storage accounts were not accrued, insofar as I know.

Q. Was all other expenses on the corporation without exception accrued?

A. Of course I would be just limited to the books, and if they had anything otherwise I wouldn't know, but I presume that they accrued everything.

(Testimony of Walter W. Schoppe.)

Mr. Wniter: That's all. We'll offer in evidence defendant's Exhibit 6.

Mr. Velikanje: You got that from Mr. Boyd's office?  
A. I believe so, yes.

Mr. Velikanje: With that testimony I have no objection to it, your Honor.

The Court: It will be admitted.

(Whereupon, Defendant's Exhibit No. 6 for identification was admitted in evidence.)

### Cross-Examination

By Mr. Velikanje:

Q. Mr. Schoppe, did you also in your examination make an examination of the dividend in kind?

A. Originally I found the dividend in kind on the books and I believe I passed it, I mean I accepted it; I made no adjustment on it, and then subsequently I was asked to re-examine the dividend in kind as to the facts and so on and so forth, and then I found that—well, that answers the question.

Q. Did you render a report to the corporation or a copy of [135] your report go to the corporation as your findings on the dividend in kind?

A. I presume the revenue agent's report was rendered to the corporation by the Internal Revenue Agent in Charge.

Q. And that would be your report to him, would it not, based on your findings?

A. Well, I passed on my copy of the report.

Q. Is that what you have in your hand?

(Testimony of Walter W. Schoppe.)

A. No, I have a photostatic copy of the typed report made by the Internal Revenue Agent in Charge of September 24, 1945.

Q. Mr. Schoppe, you found from an examination of the corporation's books it had been their custom all the way through not to accure storage, isn't that correct?

A. I don't believe I went back over any previous years. For the year under examination I didn't find that they accured storage charges.

Q. Particularly referring at the time of the dissolution of the corporation, about all they had in storage was this government merchandise, isn't that correct?

A. Well, I didn't go into what they had in storage. I believe Mr. Boyd told me that or mentioned something to that effect.

Q. In other words, you didn't bother to go in and see what they had in storage?      A. No.

Mr. Winter: Well, he didn't make this investigation until two years later; he wouldn't know.

Q. Did you look over the contracts on storage of anything?

A. I don't recall at this time. As a matter of fact, I don't recall seeing that contract before.

Q. You didn't ask for it or anything?

A. No, I don't believe so.

Mr. Velikanje: I believe that's all.

(Testimony of Walter W. Schoppe.)

### Redirect Examination

By Mr. Winter:

Q. Just one further question: I'll ask you whether or not you've had a good deal of experience examining returns of produce storing houses, have you?

A. Yes, I have had considerable experience.

Q. As a rule do the majority file on a fiscal year or a calendar year basis?

A. Well, they usually file on the fiscal year, because that's the natural time for closing; they have no inventories, or inventories are very low, so they usually file on May 31, or most of them June 30, I believe.

Q. They would at that time, as I understand it, have very little or no inventory on hand?

A. Practically none. What they would have would be worthless or practically worthless.

Mr. Winter: That's all. [137]

### Recross-Examination

By Mr. Velikanje:

Q. Mr. Schoppe, in your examination of these other companies didn't you also find that it was not the practice to accrue storage until the merchandise was shipped out?

A. I don't think I ever made a particular finding with reference to that.

Q. Well, do you remember it?

(Testimony of Walter W. Schoppe.)

A. I don't think the matter has ever come up. I don't know.

Q. So far as the Washington Fruit and Produce Company, they didn't make any accrual as to their crops they were growing on any ranches they owned, did they?

A. No, not that I know of.

Q. You testified before that all other items were accrued by them?

A. I believe I had reference to expenses. I think that was the question.

Q. Well, storage is not an expense, is it?

A. I think the question that was asked me, whether or not all expenses were accrued.

Q. All right, were there any other items that you found in your examination of the Washington Fruit and Produce Company that were not accrued?

A. Since I am more or less confined to the books and records when I make an examination, would you ask the question with reference to specific items? [138]

Q. Well, you answered it when Mr. Winter asked you. You state now that you were referring only to expenses?

A. I think that was Mr. Winter's question. He asked me whether or not the Washington Fruit and Produce Company accrued all its expenses.

Mr. Velikanje: Could you find that question back there?

(Whereupon, the reporter read the question and answer referred to, as follows: "Question:

(Testimony of Walter W. Schoppe.)

Was all other expenses on the corporation without exception accrued? Answer: Of course I would be just limited to the books, and if they had anything otherwise I wouldn't know, but I presume that they accepted everything.'')

Q. (By Mr. Velikanje): Now, you say the ranch operations were not accrued?

A. Frankly I don't remember anything about the ranch operations. This was five years ago.

Mr. Winter: The ranch is not in issue here.

Q. The ranch was a part of the corporation, wasn't it? Didn't the corporation own some ranches?

A. That I couldn't say definitely at this time unless I made a re-examination.

Q. Mr. Schoppe, as a matter of fact as to this dividend in kind, had this dividend been allowed or had no dividend been [139] made, and carried over——

Mr. Winter: If the Court please, we'll object to it as not proper cross-examination. I didn't go into anything on dividend in kind, as I recall, with this witness. I didn't intend to open up——

The Court: Well, let counsel finish his question and we'll see what he meant to ask him.

Q. (By Mr. Velikanje): From your examination of the books of the corporation is it not a fact that had the corporation failed to declare a dividend in kind or a dividend, whatever we would call it, and allowed this to proceed to the dissolution, that

(Testimony of Walter W. Schoppe.)

taxwise it would have been more advantageous to do that because of the capital gains feature?

Mr. Winter: We object to it as irrelevant, immaterial, not proper cross-examination, calling for a conclusion of this witness.

The Court: Well, I'll overrule the objection. You may answer it.

A. Well, the question was rather involved. You began with "Is it not." Will you read the question, please?

(Pending question read by the reporter.)

A. Taxwise I think it would have been to the disadvantage of the corporation because of the excess profits tax involved.

Q. But you have already come in and charged them with the full amount of their tax by the method used by the agent's [140] office, isn't that correct?

A. Yes, they received the actual money.

Q. Then on liquidation they would have treated this distribution as a capital gain and only been charged on 50 per cent of it, isn't that correct?

A. That is right.

Q. With a 25 per cent maximum.

The Court: I don't know that I follow you. Are you assuming that the apples would have been on hand on April 29?

Mr. Velikanje: Irrespective of whether the apples were on hand or whether they had been sold by the corporation, if they had not declared a dividend.

The Court: I see, what you mean, the apples or

(Testimony of Walter W. Schoppe.)

the returns from them would have been on hand.

Q. And it would have been treated then as a capital gain to the individuals, based on 50 per cent taxwise, with a maximum of 25 per cent, is that not correct?

A. Well, now, first—may I have the question again, since there was an interruption? It's a complicated question. I'm sorry.

Q. Let me re-state it. If they had not declared a dividend, that is, the corporation, and had allowed either the apples or the return from the apples to remain in the corporation—

A. Yes. [141]

Q. —then at the time of distribution or liquidation on April 29, 1944, the amount of gain to the individuals would have been based as a capital gain, and treated by taxing 50 per cent of the gain with a maximum of 25 per cent, is that not correct?

A. I think you're stating some facts and not asking a question.

Q. I was giving—

Mr. Winter: I don't understand the question, if the Court please, and will object to it as irrelevant, immaterial, argumentative, and assuming facts that are not here.

The Court: Well, I'm not sure I understand it either. Read the question again. If the witness can't answer he can say so, if he isn't able to for any reason.

A. Well, I'd like to answer if I understand it.

The Court: That's what I mean. If you don't

(Testimony of Walter W. Schoppe.)

understand it or you feel you shouldn't undertake it, just say so.

Q. (By Mr. Velikanje): Mr. Schoppe, assuming a state of facts that the Washington Fruit and Produce Company did not in February of 1944 declare a dividend—

Mr. Winter: Either in kind or in money.

Q. —either in kind or in money, assuming those facts, and they had allowed this money to remain in the corporation's hands up to the time of dissolution, would not then any gain [142] to the taxpayers over their initial cost of their stock be treated as a capital gain?

A. It would be true that it would be treated as a capital gain; however, 85.5 per cent is lost by the excess profits tax imposed thereon, so if this refers to your prior question whether it was to the advantage of the taxpayers to take the dividend in kind or not, I believe it would have been to their disadvantage taxwise to let the corporation earn the income and then take the 50 per cent on dissolution.

Q. But Mr. Schoppe, by the government's action in this case they have charged back all the profits to the corporation, have they not, so that they are already taxed, under the government's theory of this case, with the excess profits tax?

Mr. Winter: Now, if the Court please, counsel's question assumes a contention that is not made by the government in this case. Our contention is that this was income of the corporation, and we tax the income to the person who earned it, who had a right

(Testimony of Walter W. Schoppe.)

to receive it, and that's our position in this case; he assumes a fact when he states our position otherwise.

Mr. Velikanje: But your assumption is it is taxable to the corporation.

Mr. Winter: That the corporation had the income. It was an anticipatory assignment of the income to the stockholders, if you will read our contention. If you [143] want to recite the contention to the witness then we have no objection, but we object to your reciting our contention otherwise than we make it in this case.

The Court: Well, I'm not sure that I understand; the income that you seek to assign now to the corporation is the profit that would have been made on this fruit if it had been held throughout by the corporation?

Mr. Winter: If the corporation had sold it between March 14 and April 20, the same as they did sell it.

The Court: You're not contending, of course, that the whole sale, or the returns for the sale of the fruit, would be income to the corporation?

Mr. Winter: No, the corporation had the cost, the sales expense, and the profit, that was income to them and could have been distributed in dividends to the stockholders instead of passing on or assigning the anticipatory income.

The Court: Well, weren't some of the expenses charged to the stockholders in connection with this fruit?

(Testimony of Walter W. Schoppe.)

Mr. Winter: Yes, there were some expenses that were charged to them, but all of the profit was passed on to the stockholders.

The Court: I get your contention, I think, now.

(Whereupon, the pending question read by the reporter.)

A. Presently. [144]

Q. You mean presently under the government's theory?

A. Presently as the facts stand.

Q. They have been charged with the excess profits tax?

A. Yes, and they have paid the tax.

Q. And they have paid the tax.

A. And now they are asking for the refund, for the recovery.

Q. That's right, but you said in your previous answer that taxwise, because of this excess profits tax, it was more advantageous to pay a dividend?

A. I believe so.

Q. That is, if it was a dividend in kind?

A. Yes.

Q. But even if it had been held and not paid even as a dividend in kind, in distribution it would have come within the rules of capital gains as a long term capital gain, isn't that correct?

A. Yes, what was left of it, which would be 14.5 per cent.

Q. And instead of going to the individuals and taxed by them at their full amount of the dividend, the dividend plus the profits that they made from

(Testimony of Walter W. Schoppe.)

the sale of the dividend in kind?           A. Right.

Mr. Velikanje: I believe that's all.

Mr. Winter: That's all.

(Whereupon, the witness was excused.)

Mr. Winter: The government rests, your Honor. [145]

The Court: Do you have any other testimony?

Mr. Velikanje: No rebuttal.

The Court: These cases have not been consolidated for trial, and I wonder if there shouldn't be a stipulation of record here that the evidence in the case now on trial, P. J. Lynch against the United States, No. 386, that that evidence is to be taken by the court as the evidence in the other cases which I shall enumerate here, and that the decision in the Lynch case is to govern the decision in the other cases also, and the others I have reference to are 387, Bloxom, 388, Plath, 389, Plath, 390, Plath, 391, Plath, 392, Bloxom; I have named there all except 331, M. Gail Plath as executrix, which I understand is the gift case.

Mr. Velikanje: That's right.

The Court: May the record so show?

Mr. Winter: All those cases your Honor read are consolidated for trial, and the evidence shall apply to all.

Mr. Velikanje: That's right.

(Time fixed for filing briefs, and this trial was adjourned.) [146]

Reporter's Certificate

United States of America,  
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify: That I am the regularly appointed, qualified and acting official court reporter of the United States District Court in and for the Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the United States District Court for the Eastern District of Washington, held on March 20, 1950, at Yakima, Washington.

That the above and foregoing contains a full, true and correct transcript of the proceedings had therein.

Dated this 22nd day of November, 1950.

/s/ STANLEY D. TAYLOR,  
Official Court Reporter. [147]

[Title of District Court and Cause.]

### CERTIFICATE OF THE CLERK

I, A. A. LaFramboise, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the documents annexed hereto are the Original, except as noted—

Complaint.

Summons & Return of Service on Defendant.

Stipulation Continuing Time to File Answer.

Answer.

Order for Pre-Trial Conference.

Order Continuing Pre-Trial Conference.

Record of Proceedings at the Trial.

Findings of Fact and Conclusions of Law.

Letter Dated July 26, 1950, from Judge Driver to Counsel Advising of the Court's Decision, copy which I certify to be a true and correct copy of the original.

Judgment.

Exhibits (Nos. 1-a to 7, inclusive).

Notice of Appeal.

Statement of Points on Appeal.

Affidavit of Service by Mail of Notice and Statement on Appeal.

Notice of Cross-Appeal.

Statement of Points on Cross-Appeal.

Affidavit of Service by Mail of Notice and Statement on Cross-Appeal.

Designation of Record on Appeal.

Designation of Record on Cross-Appeal.

on file in the above-entitled cause, and that the same constitutes the record for hearing of the Appeal



In the United States Circuit Court of Appeals  
Ninth Circuit

No. 12814

UNITED STATES OF AMERICA,  
Appellant,

vs.

P. J. LYNCH,  
Appellee and Cross-Appellant.

### STIPULATION

It Is Hereby Stipulated by and between Velikanje & Velikanje and John S. Moore, Jr., attorneys for the appellee and cross-appellant, and Harvey Erickson, United States Attorney for the Eastern District of Washington, attorney for the appellant, that he complete transcript of record and the transcript of testimony and exhibits in the case of P. J. Lynch vs. United States of America, Civil No. 386, Eastern District of Washington, be printed and that the record in the following cases shall not be designated for printing:

Marian L. Bloxom vs. USA.....No. 387  
Dolores Plath vs. USA.....No. 388  
M. Gail Plath vs. USA.....No. 389  
M. Gail Plath, Exec. vs. USA.....No. 390  
Fred M. Plath vs. USA.....No. 391  
John M. Bloxom vs. USA.....No. 392

Dated this 26th day of January, 1951.

/s/ VELIKANJE & VELIKANJE,

/s/ E. F. VELIKANJE,

/s/ S. P. VELIKANJE,

/s/ JOHN S. MOORE, JR.,

Attorneys for Appellee and  
Cross-Appellant.

/s/ HARVEY ERICKSON,

Attorney for Appellant.

[Endorsed]: Filed February 6, 1951.

